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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 41

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

—v.—

NATIONAL SECURITIES, INC., ET AL.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT**

**PETITION FOR CERTIORARI FILED MARCH 4, 1968
CERTIORARI GRANTED APRIL 22, 1968**

Supreme Court of the United States

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—v.—

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 21,146

SECURITIES AND EXCHANGE COMMISSION, APPELLANT

v.

NATIONAL SECURITIES, INC., ET AL., APPELLEE

APPENDIX

[1]

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1965	
Mar. 30	1. File Plaintiff's Complaint for Injunction.
Mar. 30	2. File Plt's Motion for Temporary Restraining Order and Preliminary Injunction.
Mar. 30	3. File Affidavit of W. Stevens Tucker in support of Motion.
Mar. 30	4. Enter and File Temporary Restraining Order that expires on April 9, 1965 at 4:50 p.m.
Mar. 30	5. Enter and File Order to show cause on Motion for Preliminary Injunction returnable on April 9, 1965 at 9:30 a.m. Date Order or Judgment Noted, CAM.

DATE

PROCEEDINGS

1965

- Mar. 31 — Issue Summons.
- Apr. 5 6. File Defts' Notice of taking deposition of W. Stevens Tucker.
- Apr. 5 7. File Summons with Marshal's return showing service of complaint, motion for temporary restraining order, memorandum, affidavit etc. made upon Ernest A. Richards; Bonnie B. Billbrey; Producers Thrift and Loan Co.; Richard G. Johnson; William R. Reedy; Robert H. Wallace; Robert C. Bohannon, Jr.; National Life and Casualty Ins. Co.; National Securities, Inc.; Arthur W. Saffert; Producers Life Ins. Co.; Ted Wilkins; Breeferd W. Large, Jr.; Joseph B. Setter and John S. Barrett.
- Apr. 9 — Minute Entry: Order to show cause on for hearing in Chambers. Richard Gormley pres. for pltf. John Madden pres. for deft Producers Thrift & Loan Co. Robert W. Perry pres. for defts Johnson Richards, Billbrey and Richards. John Frank and Jeremy Butler pres. for remaining defts. It is ordered that this matter be passed for hearing before Judge William C. Mathes on Friday, April 16, 1965 at 9 a.m.; and that temporary restraining order remain in effect until said date. All counsel for defts state they do not stipulate to Rule 65. Date Order or Judgment Noted, CAM.
- Apr. 13 8. File Supplemental Affidavit of W. Stevens Tucker.
- Apr. 13 9. File Certificate of Service of affidavits.
- Apr. 13 10. File Affidavit of J. Grant Iverson.
- Apr. 13 11. File Affidavit of Thomas L. North.

DATE

PROCEEDINGS

1965

- Apr. 15 12. File Motion of deft Producers Thrift & Loan Company for order dropping said defendant and to Dismiss complaint as to said deft., with Memorandum and Notice of hearing on Friday, April 16, 1965 at 9 a.m.
- Apr. 15 13. File defts Johnson, Richards, Reedy and Bilbery's resistance to Plt's Motion for Preliminary Injunction.
- Apr. 15 14. File ANSWER of the defts National Securities, Inc.; National Life & Casualty Insurance Co.; Robert H. Wallace; Robert C. Bohannon, Jr.; Arthur W. Saffert; Ted Wilkins; John S. Barrett; Joseph B. Setter; Breeferd W. Large, Jr.; and Producers Life Insurance Company.
- Apr. 16 15. File Defts' Motion for order dropping defts Richard G. Johnson, Ernest A. Richards, William P. Reedy and Bonnie B. Bilbrey; and to Dismiss Complaint.
- Apr. 16 16. File Affidavit of Robert H. Wallace. (Deft's Exhibit B)
- Apr. 16 17. File Affidavit of Arthur W. Saffert. (Deft's Exhibit C)
- Apr. 16 18. File Affidavit of Robert A. Mills. (Deft's Exhibit D)
- Apr. 16 — Minute Entry: Plt's Motion for Preliminary Injunction on for hearing. W. Stevens Tucker and F. E. Kennamre, Jr. pres. for the pltf. John Frank, A. Gordon Oldsen, Jeremy Butler and Robert Mills are pres. for defts National Security Life and Casualty Ins.; Robert H. Wallace, Robert C. Bohannon, Jr., Arthur W. Saffert, Ted Wilkins, John S. Barrett, Joseph B. Setter, Bruferd W. Large, Jr. and Producers Life Ins. Co. Roger Perry is pres. for defts Johnson, Richards, Reedy and Bilbrey. John Madden is pres. for deft Producers Thrift &

DATE**PROCEEDINGS**

1965**Apr. 16 —
(Continued)**

Loan. Motion for Order dropping debts Johnson Richards Reedy & Bilbrey and Motion for Order dropping Producers Thrift & Loan are argued, Court reserves ruling. Hearing is had on Motion for Preliminary Injunction. Counsel for pltf moves to insert the name of Arthur W. Saffert on page 2, line 3 following the name of Bilbrey and page 12, line 6 following

[2]

the name of Bilbrey in the original complaint. It is Ordered interlineation may be made on said pages in said original complaint. Pltf's Exhibits 13, 14, 1 through 12, inclusive, 16, 17 and 18 admitted. Counsel for debts moves for judgment on the case as made and for denial of the application for preliminary injunction. It is Ordered that said motion is denied. Debts' Exhibits A, B, C, D and E admitted. On stipulation of counsel, Order debts Ex. F for ident. and E in evidence may be withdrawn to make photocopies and substituted for originals. Motion for preliminary Injunction argued. On stipulation of counsel It is Ordered the complaint is dismissed without prejudice as to debts Johnson, Richards, Reedy, Bilbrey and Producers Thrift and Loan Co. Counsel for pltf to prepare written form of Order for Dismissal. Counsel for debts National Securities et al moves for an order of dismissal, and to deny the application for preliminary injunction without prejudice. Said motions argued. The case stands submitted to the Court. Subsequently all counsel being present, Motion vacating part of temporary restraining order and containing all matters until called up by counsel and form of order thereon are presented by the Court and Order signed and filed. Data Order or Judgment Noted, WCMathes

DATE**PROCEEDINGS****1965**

- Apr. 16 19. File Response of the National Securities Producers Group to Application for Preliminary Injunction.
- Apr. 16 20. File Brief and Opinions in conjunction with the Brief of the Nat'l Securities, Inc.—producers group.
- Apr. 16 21. Enter and File Order and Judgment Dropping debts Richard G. Johnson, Ernest A. Richardson, William P. Reedy, Bonnie B. Bilbrey and Producers Thrift & Loan Company. Date Order or Judgment Noted, WCM
- Apr. 16, — 8 conformed copies of Order and Judgment issued to counsel.
- Apr. 16 22. File Motion of debts Nat'l Securities, Inc., Nat'l Life & Casualty Ins. Co.; Robert H. Wallace, Robert Bohannon, Jr., Arthur W. Saffert, Ted, Wilkins, Don S. Barret, Joseph B. Setter, Breeferd W. Large, Jr. and Producers Life Ins. Co. that the temporary restraining order be vacated with exceptions; Enter and file Order that the temporary restraining order is vacated except as to the portions set forth in the motion as to which it is continued pending hearing of pltf's Motion for a preliminary injunction, or any other matters in this cause, which further hearing may be instituted upon application by any of the parties. This continuance shall be without prejudice to the claims of any of the parties as to the jurisdiction of this Court or as to the applicable law or facts. Date Order or Judgment Noted, WCM
- Apr. 26 23. File Reporter's Partial Transcript of proceedings dated April 16, 1965. Date Order or Judgment Noted, HRS

DATE

PROCEEDINGS

1965

- June 14 24. File Motion of the Securities and Exchange Commission under Rule 34 for the Production of Documents for inspection and copying, with notice of hearing on June 21, 1965 at 10 a.m. in courtroom No. 8.
- June 21 — Minute Entry: Motion of the pltf. for the production of documents for inspection and copying on for hearing. No appearance for pltf. Jeremy Butler pres. for deft. Upon written application of pltf and no objection on part of deft, It is Ordered that this case is assigned to the Hon. Wm. C. Mathes in San Francisco, Calif. for hearing on the said motion and for such other matters as the Court may desire to hear for the week of July 12, 1965 at the convenience of the court. Date Order or Judgment Noted WEC
- July 6 25. File Motion to Dismiss, of defts., and memorandum of authorities.
- July 6 26. File Motion of Defts. National Securities, Inc.; National Life & Casualty Insurance Company and Producers Life Ins. Co.; to Strike Plaintiff's Motion for Production of Documents for Inspection and Copying.
- July 6 27. File Deft's Notice of Hearing on Motions at San Francisco, Calif. before Hon. Wm. C. Mathes, at 2:00 p.m., and Certificate of Mailing Motions.
- July 7 28. File Defts' Response to Motion to Produce.
- [3]
- July 16 29. File Pltf's Certificate of service by mail in a sealed envelope addressed to Messrs. Lewis, Roca, Scoville, Beauchamp & Linton.

DATE	PROCEEDINGS
1965	
July 16	80. Docket Pltf's Memorandum in Reply to Response of National Securities—Producers Group to Application for Preliminary Injunction, filed Jul. 12, 1965.
July 16	31. Docket Pltf's Notice of Hearing on Motion, filed July 12, 1965.
July 16	32. Docket Pltf's Reply to Response to Motion to Produce, filed Jul. 12, 1965.
July 16	33. Docket Pltf's Memorandum of Points and Authorities in Opposition to Motion to Strike Motion for Production of Documents, filed Jul. 12, 1965.
July 16	34. Docket Defts' Revised Statement of Facts, filed July 12, 1965.
July 16	35. Docket Pltf's Memorandum in Support of Motion to Reopen Hearing on Appl. for Interlocutory Injunction, filed July 12, 1965.
July 16	36. Docket Pltf's Certificate of Service, filed July 12, 1965.
July 16	37. Docket Order on Motions Presented July 12, 1965 and filed July 13, 1965 at San Francisco, Calif., allowing pltf. to file its amended and supplemental complaint within 30 days, allowing defts. 30 days from receipt of copy thereof to serve and file any motion or other responsive matter, placing Defts' Motion to Dismiss Complaint and Pltf's Motion for Reopening Hearing on Preliminary Injunction and for Additional Relief Pendente Lite both off calendar without prejudice to apply for reinstatement and consideration. Date Order or Judgment Noted, WCMathes

DATE**PROCEEDINGS****1965**

- Aug. 12 38. File Plt's Amended and Supplemental Complaint for injunction.
- Aug. 13 39. File Plt's Certificate of service of the amended and supplemental complaint for injunction upon the defts.
- Aug. 25 40. File Plt's Notice of taking deposition of Arthur W. Saffert.
- Sept. 1 41. File Defts' Notice of submission of their motion and request to the Clerk to submit.
- Sept. 1 42. File ANSWER of defendants to amended and supplemental complaint.
- Sept. 1 43. File Defts' Motion for Judgment on the pleadings, or in the alternative, for Summary Judgment.
- Sept. 1 x44. File Defts' Memorandum in support of motion for judgment etc.
- Sept. 1 45. File Defts' Motion for Protective Order.
- Sept. 14 46. File Response of Securities and Exchange Commission to Defendants' Motion for Protective Order.
- Sept. 14 47. File Motion of Securities and Exchange Commission for Permission to Amend Complaint to Add Parties Defendant, with proposed Second Amended and Supplemental Complaint for Injunction and Affidavit of W.S. Tucker attached.
- Sept. 14 48. File Plaintiff's Memorandum on Motion to Amend to Add Parties Defendant.
- Sept. 14 49. File Certificate of Mailing (of documents filed Sept. 14, 1965)
- Sept. 14 50. File Response of Defts. to Motion to Amend by Adding Additional Parties.

DATE**PROCEEDINGS****1965**

- Sept. 21 51. File Affidavit of W. Stevens Tucker re deposition of A. W. Saffert.
- Sept. 24 52. File Reporter's Transcript of Proceedings Re: Deposition of Arthur W. Saffert.
- Oct. 26 53. File Third Affidavit of W. Stevens Tucker, atty. for pltf., in response to certain portions of the Commission's Motion for Production of Documents.
- Oct. 26 x54. File Pltf's Memorandum in opposition to defts' Motions for Judgment on the pleadings or in the alternative for Summary Judgment and for a Protective order and in support of pltf's Motion to amend complaint to add parties deft.
- Oct. 28 55. File Pltf's Certificate of mailing.
- Oct. 28 56. File Pltf's Errata Sheet to Memorandum in opposition to defts' Motions for Judgment on the pleadings etc.

1966

- Feb. 14 57. Enter and File Order that defts' motion for a protective order to prevent the taking of a deposition of deft Arthur W. Saffert is hereby granted; it is further ordered that the Clerk promptly serve copies of this order upon the parties appearing in this cause. Date Order or Judgment Noted, WCMathes
- Feb. 14 58. Enter and File Order that pltf's motion to add additional parties deft is hereby denied; that the Clerk serve copies of this order upon the parties. Date Order or Judgment Noted, WCM
- [4]
- Feb. 14 59. Enter and File Order that defts' motion for judgment on the pleadings is hereby granted; that defts serve and lodge with the Clerk,

DATE

PROCEEDINGS

1966

- Feb. 14 59. within 10 days from the date of this order,
(Continued) an appropriate form of judgment, which shall provide that pltf's action be dismissed without costs to any party, and that the judgment shall not constitute an adjudication upon the merits; that the Clerk promptly serve copies of this order upon the attys for the parties appearing in this cause. Date Order or Judgment Noted, 2-14-66; WCMathes
- Feb. 14 — Copy of each of above orders mailed to counsel for both sides.
- Feb. 16 60. File Defts' Notice of lodging proposed judgment with certificate of mailing.
- Feb. 16 — Lodge proposed judgment.
- Mar. 23 61. Enter and file judgment that Defendant's Motion for Judgment on the Pleadings be and the same is granted, each party to bear its own costs; and adjudging that this judgment shall not constitute an adjudication upon the merits. Date Order or Judgment Noted, WCMathes; 3-23-66
- Mar. 23 Conformed copy of judgment mailed to Mr. Tucker and to Mr. Frank.
- Apr. 27 62. File Pltf's Notice of Appeal, with affidavit of service on counsel.
- May 9 63. File Designation of record on appeal.
- June 3 64. Enter and File Order that the record on appeal time is hereby extended to and including July 2, 1966. Date Order or Judgment Noted, CAM
- July 1 65. Enter and file Order Extending Time to file record and docket appeal to and including July 26, 1966. Date Order or Judgment Noted, WEC

[Filed March 30, 1965]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. Civ-5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., a corporation, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, a corporation, ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRET, JOSEPH B. SETTER, BREEFERD W. LARGE, JR., RICHARD G. JOHNSON, ERNEST A. RICHARDS, WILLIAM A. REEDY, BONNIE B. BILBREY, PRODUCERS LIFE INSURANCE COMPANY, a corporation, and PRODUCERS THRIFT & LOAN COMPANY, a corporation, DEFENDANTS

COMPLAINT FOR INJUNCTION

I

1. It appears to the Securities and Exchange Commission, plaintiff herein, that the defendants National Securities, Inc., a corporation ("National Securities"), National Life & Casualty Insurance Company, a corporation ("National Life"), Robert H. Wallace ("Wallace"), Robert C. Bohannon, Jr. ("Bohannon"), Ted Wilkins ("Wilkins"), John S. Barret ("Barret"), Joseph B. Setter ("Setter"), Breeferd W. Large, Jr. ("Large"), Richard G. Johnson ("Johnson"), Ernest A. Richards ("Richards"), William A. Reedy ("Reedy"), Bonnie B. Bilbrey ("Bilbrey"), Arthur W. Saffert, ("Saffert"), Producers Life Insurance Company ("Producers Life"), a corpora-

tion, and Producers Thrift & Loan Company ("Producers Thrift"), a corporation, have been and are engaged and are about to engage in acts and practices which constitute violations of Section 10(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5.

2. This action arises under Section 21(e) of the Act, 15 U.S.C. 78(e).

3. This Court has jurisdiction of this action under Section 27 of the Act, 15 U.S.C. 78aa.

II

1. The defendant National Life is an Arizona corporation engaged in the life insurance business in Arizona and other western states.

2. The defendant National Securities is a Colorado corporation transacting business in Arizona as a holding company owning a majority of and controlling interest in the stock of National Life.

3. At all times material hereto, the defendant Wallace has been president, chief executive officer and a director of National Securities and National Life; the defendant Bohannon has been executive vice-president of National Securities and National Life; the defendant Saffert has been employed by National Life as an actuary by National Life; and the defendants Wilkins, Barret, Setter and Large were employees of National Securities, or of National Life or of another subsidiary of National Securities, and subject to the direction and control of the defendant Wallace as principal executive officer of National Life and National Securities.

4. The defendant Producers Life is an Arizona corporation engaged in the life insurance business in Arizona and other western states.

5. The defendants Johnson, Reedy, Richards, Billbrey, prior to and on April 27, 1964, controlled and managed the business and affairs of Producers Life and, together with J. Grant Iverson, Jess E. Hunter and John J. Falcomer, comprised its board of directors.

6. As of April 27, 1964, Producers Life had approximately 14,000 stockholders and 880,000 shares of common

stock issued and outstanding, including 50,205 treasury shares.

7. Prior to and on April 27, 1964, the defendants Johnson, Richards, Reedy and Bilbrey owned 27,415 shares of Producers Life and, in addition, controlled 35,904 shares of Producers Life which were held in the name of Producers Thrift, all of whose stock was owned by said defendants and one other person.

8. Prior to and on April 27, 1964, the defendants Johnson, Richards and Reedy held voting proxies representing approximately 565,000 out of approximately 880,000 shares of the outstanding common stock of Producers Life.

III

1. Prior to March 15, 1964, and continuing to the present time, the defendants have been and are making use of means and instrumentalities of interstate commerce and of the mails to engage in manipulative and deceptive devices and contrivances, in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j, and Rule 10b-5 thereunder, 17 CFR 240.10b-5; in connection with the purchase and sale of securities issued and to be issued by Producers Life and National Life, a) by employing a device, scheme and artifice to defraud; b) by making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; and c) by engaging in acts, practices and a course of business which operates and would operate as a fraud and deceit upon the defendant Producers Life and its stockholders, as more fully set forth below.

2. Prior to March 15, 1964, and continuing until the present time, in derogation of the rights and interests of the stockholders of Producers Life, and in contravention of the fiduciary obligations of the defendants Johnson, Richards, Bilbrey and Reedy ("selling directors") to Producers Life and its stockholders, and contrary to the fiduciary obligations of the defendants Wallace, Saffert, Wilkins, Barret, and Large ("successor directors") to

Producers Life and its stockholders, the defendants with the objective of transferring control of and dominion over the assets, business (including insurance in force) and other resources of Producers Life to National Life and National Securities, and with the ultimate objective of accomplishing the merger, consolidation or amalgamation of Producers Life and National Life (with Producers Life to remain as the surviving corporation under the name National Producers Life Insurance Company, subject to the dominion and control of the defendant National Securities and its nominees), have conducted negotiations and effected arrangements including the following:

- (a) the sale and transfer of the stock of Producers Life owned by Messrs. Johnson, Richards, Reedy and Bilbrey ("the selling directors"), by Producers Thrift and by Producers Life ("treasury stock") to National Life or National Securities;
- (b) the sale, surrender and transfer by defendants Johnson, Richards, Bilbrey and Reedy to National Life or National Securities and their designees of their directorships and offices in Producers Life, together with the voting proxies of ordinary stockholders held by them;
- (c) the acquisition by defendant Reedy and his nominees from Producers Life of 111,088 shares of the Class A stock and 1,469 shares of the Class B stock of Dependable Life Insurance Company ("Dependable") owned by Producers Life;
- (d) the acquisition by Producers Thrift of 40,000 shares of its preferred stock, \$100,479 of its promissory notes and assigned collateral and 25,248 shares of the stock of Producers Finance Company of Arizona owned by Producers Life;
- (e) the execution of agreements under which the selling directors are to receive \$979,000 from National Securities for their agreements not to compete in the insurance business and the assumption by National Securities of pre-existing obligations of Producers Life to certain other persons under similar agreements; and

(f) the consolidation of all of the business operations of Producers Life into those of National Life; and the defendants are seeking to accomplish the following additional elements of their scheme and plan:

- (g) the merger or consolidation of Producers Life and National Life by means of purchases and sales of securities through an agreement of consolidation and plan of reorganization;
- (h) the acquisition of complete dominion over and control by National Life and National Securities, their officers, directors and nominees, of all assets, business and affairs of Producers Life.

3. On or about April 27, 1964, the individual defendants in their respective capacities as directors of National Securities, of Producers Life, of Dependable Life and of Producers Thrift met in Phoenix, Arizona, to authorize the corporate actions necessary to put the foregoing plan and scheme into operation.

4. On or about April 27, 1964, pursuant to actions taken by their directors, the corporate defendants National Life, National Securities, Producers Life and Producers Thrift and the individual defendants Johnson, Richards, Reedy and Bilbrey entered into and performed an escrow agreement which, by means of the documents, moneys and securities passing through said escrow, accomplished the purposes of Items (a), (b), (c), (d) and (e) of paragraph 2 hereof.

5. The defendants Reedy, Johnson, Bilbrey and Richards, in furtherance of the plan and scheme, caused Producers Life to transfer to National Securities through said escrow 50,203 shares of the treasury stock of Producers Life for a stated consideration of \$114,964.87 in cash or securities (equivalent to \$2.29 per share, the then book-value of said stock) at a time when the market price for said stock on the over-the-counter market was approximately 7½ bid, 8 asked.

6. On or about April 27, 1964, National Securities purported to assume certain obligations of Producers Life and Dependable in favor of persons named Pound, Love-

lace, Heeder and Davis in the amount of \$627,891.28 as an additional consideration for the purchase of the 50,208 shares of Producers Life as described in paragraph 5 hereof. It was intended, however, that, after assuming dominion over and control of Producers Life, National Securities and National Life, through their agents and nominees, would cause Producers Life or the surviving corporation resulting from the prospective merger or consolidation of Producers Life and National Life to reimburse National Securities for moneys paid out pursuant to its assumption of such obligations.

7. On or about April 27, 1964, as an incident of the escrow described in paragraph 4 hereof, and in furtherance of defendants' plan and scheme, National Securities, Inc. and the selling directors executed and exchanged agreements by which the selling directors and Dependable agreed (with some limitations) not to compete in the insurance business with Producers Life and National Life or any entity emerging from the prospective merger or consolidation of those corporate defendants, and National Securities agreed to compensate the selling directors in an aggregate amount of \$979,000 payable in 120 monthly installments following April 30, 1964. As an element of said scheme and plan, it was intended that after assuming dominion over and control of Producers Life, National Securities and National Life, through their agents and nominees, would cause Producers Life, or the corporation surviving from said merger or consolidation, to reimburse National Securities for moneys paid out pursuant to said "non-compete" agreements.

8. On or about April 27, 1964, in furtherance of said scheme and plan, the defendants Johnson, Reedy, Richards and Bilbrey received approximately \$570,000 from National Securities through said escrow as consideration for their 27,416 shares of the stock of Producers Life, which sum is equivalent to \$20.79 per share.

9. On or about April 27, 1964, in furtherance of said scheme and plan, the selling directors caused Producers Thrift, which they owned and controlled, to sell through said escrow to National Securities 38,894 shares of the stock of Producers Life for an aggregate consideration of \$372,769.41, or approximately \$9.00 per share.

10. On or about April 27, 1964, in furtherance of said scheme and plan, at a meeting of the directors of Producers Life, the selling directors resigned their positions as officers and directors of Producers Life, one by one, and caused the remaining directors to elect in their stead as directors, nominees of National Securities and National Life, namely, the defendants Saffert, Barret, Setter and Large, who thereupon assumed management and control of the assets, business and affairs of Producers Life.

11. On or about April 27, 1964, in furtherance of said plan and scheme, the defendants Saffert, Barret, Setter and Large, then constituting a majority of the board of directors of Producers Life (called the "new board"), forthwith caused the election of defendant Saffert as president and of defendant Large as secretary of said corporation.

12. On or about April 27, 1964, in order to cement the dominion and control over Producers Life by National Securities and National Life, and their agents and nominees, and in furtherance of said scheme and plan, the defendants Johnson, Edwards and Reedy transferred through said escrow to the defendant Wallace voting proxies representing in excess of 60 per cent of the then outstanding stock of Producers Life, together with documents of assignment and substitution.

13. On April 27, 1964, as a further incident of said scheme and plan, the new board of directors of Producers Life forthwith caused its officers Saffert and Large to execute a "Management Agreement" between Producers Life, National Securities by which National Securities assumed full and complete management of the business and affairs of Producers Life.

14. Shortly after April 27, 1964, all of the books, records and business operations of Producers Life were removed to the premises of National Life and blended into the operations of National Life, the offices of Producers Life were closed and its affairs since have been conducted in the office of National Life.

15. Shortly after April 27, 1964, the minority directors of Producers Life, that is, Messrs. Iverson, Falconer and Hunter, resigned. The remaining directors elected

the defendants Wallace, Wilkins and Large; nominees of National Securities, in their stead. This board then elected defendant Bohannon as assistant secretary of Producers Life with specific powers respecting transactions in the stocks, bonds and other securities in its securities portfolio.

16. Subsequent to April 27, 1964, the shares of Producers Life acquired by National Securities were transferred to National Life.

17. On or about November 27, 1964, in furtherance of said scheme and plan, the defendants National Life and Producers Life entered into an agreement to consolidate and reorganize. This agreement was authorized on behalf of Producers Life by its Board of Directors, all of whom were nominees of National Securities. The agreement provides, *inter alia*, for the merger of National Life into Producers, the termination of the management agreement (described in paragraph 18 hereof), a reorganization of Producers Life and the issuance of shares of Producers Life in exchange for outstanding shares of National Life, the change of the name of Producers Life to National Producers Life Insurance Company (National Producers), and an undertaking by Producers Life and National Life that National Producers will reimburse National Securities for all expenses arising from National's obligations (a) pursuant to the "non-compete" agreements executed in favor of defendants Bilbrey, Johnson, Richards and Reedy as described in paragraph 7 hereof, and (b) pursuant to its obligations to persons named Pound, Lovelace, Heeder and Davis as described in paragraph 6 herein. In addition, the agreement to consolidate and reorganize provides for its submission to the stockholders of Producers Life and National Life for their approval.

18. On or about November 27, 1964, in furtherance of said scheme and plan, the defendants mailed to the stockholders of Producers Life copies of the consolidation agreement dated November 27, 1964, together with copies of the notice of special meeting of stockholders to be held on December 31, 1964, and other material soliciting proxies to the defendants Saffert and Wallace to be voted in favor of the consolidation agreement. The consolidation

agreement provides that Producers Life (to be renamed National Producers Life Insurance Company), as the surviving corporation upon consummation of the agreement, is to reimburse National Securities (and charge to expense) any sums paid by National Securities on account of its "non-compete" agreements of April 27, 1964, with the selling directors, but neither in such proxy solicitation material nor otherwise have the defendants disclosed to stockholders of Producers Life that the amounts to be paid to National Securities are about \$97,900 per year; that, in addition, the consolidation agreement provides that the surviving corporation will reimburse National Securities (and charge as expense) any sums paid out by National Securities by reason of its assumption on April 27, 1964, of certain liabilities of Producers Life to Pound, Lovelace, Heeder and Davis for their agreements not to compete in the insurance business, but the defendants have not disclosed to stockholders of Producers Life in such proxy solicitation material or otherwise that the amount so to be paid is approximately \$113,000 per year, that the "non-compete" agreements between National Securities and the selling directors run for the period of 10 years from April 30, 1964, that the "non-compete" agreements between Producers Life and Pound, Lovelace, Heeder and Davis, which were assumed by National Securities on April 27, 1964, run for five years from December 31, 1964, and that under the consolidation agreement National Securities would relieve itself from, and transfer to the survivor of the proposed consolidation of Producers Life and National Life, its obligations to Pound, Lovelace, Heeder and Davis which it had purported to assume and for which it was credited in the amount of \$627,891.76 on the stated purchase price of \$742,850.63 for the 50,203 shares of stock of Producers Life as described in paragraphs 5 and 6 hereof.

19. The meeting so noticed was convened on December 31, 1964, but was recessed *sine diem* without a vote on the proposed merger.

20. In furtherance of said scheme and plan, the defendants National Securities and National Life, Wallace and Bohannon, acting through the defendants Saffert and

Large, as their agents and nominees, arranged for the meeting of stockholders of Producers Life so recessed on December 31, 1964, to be reconvened on March 26, 1965, in Phoenix, Arizona. On March 13, 1965, said defendants caused a notice of the reconvening of the meeting to be sent (over the signature of the defendant Large) to stockholders of Producers Life with an enclosed communication (over the signature of the defendant Saffert) soliciting proxies in favor of the existing management to be voted in favor of the consolidation agreement and plan of reorganization described in paragraph 17 hereof.

21. On or about March 2, 1965, in furtherance of said scheme and plan, the defendant National Securities, National Life, Wallace, Bohannon, Saffert and Large and the defendant directors of Producers Life caused to be mailed to stockholders of Producers Life a communication (over the signature of the defendant Saffert) soliciting proxies to be voted in favor of the proposed agreement and plan of reorganization with which was enclosed a copy of an investment advisory letter entitled "North's News Letter and Special Report" dated February 9, 1964. Said "Special Report" while purporting to be an analysis by an independent investment advisory service of the financial affairs of National Securities and its subsidiaries, including National Life and Producers Life, and of the effect of the proposed merger and consolidation, in fact represented nothing more than as assemblage of statistics and projections which had been received from the management of National Securities (including management's forecast of \$460,000 net income for the two insurance companies to be merged for the calendar year 1965, purportedly based upon financial statements as of December 31, 1963, and June 30, 1964), and said "Special Report" did not in any true sense represent an independent analysis of National Securities by the advisory service.

22. In furtherance of said scheme and plan, the communications sent out on March 13, 1965 and March 2, 1965 as described in paragraphs 21 and 22 hereof, omitted to set forth the following material facts necessary in order to make the statements made therein not misleading;

- (a) that during the fiscal year ending December 31, 1964, a net operating loss of \$35,657 had been sustained by National Life and a net operating loss of \$69,716 had been sustained by Producers Life;
- (b) the shares of capital stock of Producers Life acquired by National Life at a stated cost in excess of \$1,200,000 had been written down on the books of National Life to \$641,658, the approximate market value of said stock as of December 31, 1964, with a resulting reduction of the surplus account of National Life in the sum of \$579,381.15.

The defendants, unless restrained and enjoined, will continue to engage in the acts and practices specified above.

WHEREFORE, the Securities and Exchange Commission demands a temporary restraining order, a preliminary injunction and a permanent injunction restraining and enjoining the defendants National Securities, Inc., National Life & Casualty Insurance Company, Robert H. Wallace, Robert C. Bohannon, Jr., Ted Wilkins, John S. Barret, Joseph B. Setter, Breeferd W. Large, Jr., Richard G. Johnson, Ernest A. Richards, William A. Reedy, Bonnie B. Bilbrey, Arthur W. Saffert, Producers Life Insurance Company and Producers Thrift & Loan Company, their officers, agents, employees, attorneys, successors or assigns, and all persons acting in concert or participation with them, from, directly or indirectly—

A. making use of any means or instrumentality of interstate commerce or of the mails to engage in any manipulative or deceptive device or contrivance, in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5, in connection with the purchase or sale of securities issued or to be issued by Producers Life or National Life or National Securities, or any affiliate or subsidiary of any of such issuers, involving any plan or

arrangement between the managing directors of Producers Life and the managing directors of National Securities or National Life to surrender and transfer to National Life the directorships or offices of the managing directors of Producers Life, together with voting proxies sufficient to ensure dominion over and control of Producers Life by National Life and National Securities, or the ultimate merger, consolidation or amalgamation of Producers Life and National Life, in derogation of the rights and interests of the stockholders of Producers Life and in contravention of the fiduciary obligations of the defendants or any of them to Producers Life and its stockholders, a) by employing any device, scheme or artifice to defraud; b) by making any untrue statement of material fact or omitting to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or c) by engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon Producers Life or its stockholders, whether through—

- (1) the device of a plan of reorganization, consolidation, merger or otherwise, and specifically through implementation or consummation of the Consolidation Agreement and Plan of Reorganization executed by Producers Life Insurance Company, National Life Insurance Company and National Securities, Inc., dated November 27, 1964; or
- (2) the solicitation of proxies or votes of stockholders to be used to accomplish any such plan of reorganization, consolidation or merger; or
- (3) any untrue statement of material fact or omission to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made not misleading, with respect to:

- (a) the dollar amount of any liabilities or obligations assumed or to be assumed by Producers Life or the surviving company in any merger involving Producers Life;

- (b) the assets, liabilities, capital, surplus or deficit, income or losses of Producers Life or National Life or of any other company with which it may be proposed to merge or combine Producers Life;
- (c) any transaction which materially affects the assets, liabilities, capital surplus or deficit, income or losses of Producers Life, National Life, or of any other company in which it may be proposed to merge, combine or consolidate Producers Life; or
- (d) any forecast as to the earnings, income or amount of business of Producers Life, National Life or of any surviving company into which Producers Life may be merged, combined or consolidated;

or engaging in any act, practice or course of business of similar object or purport; or

B. voting or causing to be voted any proxies executed by stockholders of Producers Life which have been received by the defendant Wallace from the defendants Johnson, Richards or Reedy;

C. voting any proxies executed by stockholders of Producers Life appointing the defendants Saffert and Wallace, or either of them, which were solicited or received subsequent to April 27, 1964;

D. voting any of the 135,008 shares of stock of Producers Life held by National Life as of December 31, 1964;

E. performing any act which facilitates or is designed to facilitate the consummation of the Consolidation Agreement and Plan of Reorganization dated November 27, 1964, between Producers Life, National Life, and National Securities.

The Securities and Exchange Commission demands such other and further relief that may be appropriate, just and equitable, or necessary to effectuate and implement

the terms of any decree that may be entered by the Court in accordance with the foregoing demands.

/s/ Arthur E. Pennekamp
ARTHUR E. PENNEKAMP
Regional Administrator

/s/ F. E. Kennamer, Jr.
F. E. KENNAMER, JR.
Assistant General Counsel

/s/ W. Stevens Tucker
W. STEVENS TUCKER
Assistant Regional Administrator

/s/ William M. Ziering
WILLIAM M. ZIERING
Attorney
Securities and Exchange Commission

25
[Filed March 30, 1965]

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(Phoenix Division)**

Civil Action No. Civ-5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

**NATIONAL SECURITIES, INC., a corporation, NATIONAL
LIFE & CASUALTY INSURANCE COMPANY, a corporation,
ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR.,
ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRET,
JOSEPH B. SETTER, BREEFERD W. LARGE, JR., RICHARD
G. JOHNSON, ERNEST A. RICHARDS, WILLIAM A.
REEDY, BONNIE B. BILBNEY, PRODUCERS LIFE INSUR-
ANCE COMPANY, a corporation, and PRODUCERS THRIFT
& LOAN COMPANY, a corporation, DEFENDANTS**

**MOTION OF SECURITIES AND EXCHANGE
COMMISSION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

The Securities and Exchange Commission, plaintiff herein, moves this Honorable Court to enter a Temporary Restraining Order and a Preliminary Injunction in accordance with the demand made in the Complaint for Injunction filed herein.

This motion is based upon the Complaint for Injunction and the Affidavit W. Stevens Tucker, Assistant Regional Administrator, of the San Francisco Regional Office of the Securities and Exchange Commission, filed herein showing that the defendants National Securities, Inc., National Life & Casualty Insurance Company, Robert

B. Wallace, Robert C. Bohannon, Jr., Arthur W. Saffert, Ted Wilkins, John S. Barret, Joseph B. Setter, Breeferd W. Large, J., Richard G. Johnson, Ernest A. Richards, William A. Reedy, Bonnie B. Bilbrey, Producers Life Insurance Company and Producers Thrift & Loan Company have been and are engaged in acts and practices in violation of Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)), and Rule 10b-5 (17 CFR 240.10b-5) thereunder, and that said defendants, unless enjoined, will continue to engage in such acts and practices contrary to the public interest and to the serious prejudice of Producers Life Insurance Company and its stockholders.

Respectfully submitted,

ARTHUR E. PENNEKAMP
Regional Administrator
F. E. KENNAMER, JR.
Assistant General Counsel
W. STEVENS TUCKER
Assistant Regional Administrator
WILLIAM M. ZIERING
Attorney
Attorneys for the Securities and
Exchange Commission

By /s/ W. Stevens Tucker
W. STEVENS TUCKER
Of Counsel for Securities and
Exchange Commission

[Filed March 30, 1965]

**Affidavit of W. Stevens Tucker in Support of Motion for
Temporary Restraining Order and Preliminary Injunction**

[9] 25. An additional communication soliciting proxies and advocating approval of the merger was caused to be sent through the mails by the management of Producers Life over the purported signature of A. W. Saffert, President, on or about the 2d of March 1964, enclosing a copy of a document entitled "North's News Letter Report" dated February 9, 1965, described as "a leading independent financial reporting service with a wide national following" copies of which communication and report are attached respectively, as Exhibits 12A and 12B. Said report, Exhibit 12B, purports to be based on information supplied by the management of Producers Life, including financial information as of June 30, 1964 and December 31, 1963.

[10] 26. In compiling and transmitting said letter of March 2, 1964, and enclosure (Exhibits 12A and 12B) the management of Producers Life and A. W. Saffert, its president, omitted to disclose to stockholders of Producers Life that preliminary financial statements, including statements of operations for the year ending December 31, 1964, had been prepared some time prior to February 18, 1965 by and for National Life and by and for Producers Life. They further omitted to disclose that these financial statements, including statements of operation, reflected a net operating loss of \$35,657 by National Life and a net operating loss of \$69,716 by Producers Life for the year 1964. They also failed to disclose that a formal annual statement of the financial condition and operations of National Life for the year ending December 31, 1964, had been sworn to by R. M. Wallace as President, George B. Sharp as Secretary and Arthur W. Saffert as Actuary on February 26, 1965 and filed with the Insurance Commissioner of Nevada on March 1, 1965 and that this annual statement also reflected the net operating loss of \$35,657. The annual report of Producers Life for the year 1964 had not been filed by 2 P.M. March 26, 1965

with the Insurance Commissioner of the State of Arizona and at 3:30 P.M. on March 29, 1965 (the time of execution of this affidavit) it had not been filed with the Insurance Commissioner of the State of Nevada.

27. The Consolidation Agreement (Exhibit 9) and the material dated November 27, 1964 accompanying its transmittal to stockholders dated March 2, 1965 (Exhibits 12A and 12B) all fail to disclose that the amounts payable to National Securities by Producers Life under the provisions of paragraph 24 of the Consolidation Agreement (Exhibit 9) would amount to \$8,157 per month (equivalent to \$97,884 per year) from gross revenues (on account of the payments required to be made to [11] Messrs. Johnson, Richards, Reedy and Bilbrey) for the remainder of the period of 120 months after April 30, 1964, and further fail to disclose the additional substantial amounts that would become payable by Producers Life to National Securities from gross revenues to reimburse National Securities for payments to be made to the persons named Pound, Lovelace, Heeder and Davis pursuant to National Securities undertaking in Exhibit 4 (for which it had received credit in the sum of \$635,884.81 on account of its purchase price in acquiring the 50,203 shares of treasury stock of Producers Life).

28. The annual report of Producers Life for the year ending December 31, 1964 was filed with the Insurance Commissioner of the State of Louisiana on March 1, 1965 and an amended report was filed with such Commissioner on March 15, 1965, both of which show a loss from operations for the year 1964 of \$69,716, but such loss was not disclosed to stockholders in any communications sent to stockholders of Producers Life by its officers and directors.

29. The North's News Letter Report Exhibit 12B was represented in the transmittal letter Exhibit 12A to be the report of "a leading independent financial service". It was not disclosed to Producers Life stockholders that: (a) the Report was based entirely upon information supplied to the editor and publisher of the service by defendants Wallace and Bohannon and certain of their assistants, including the document (and included financial statements and estimates) appended hereto as Exhibit 10,

(b) that copies of the Management Agreement (Exhibit 8) and Consolidation Agreement (Exhibit 9) were not submitted by them to the editor for his independent consideration, (c) that he relied on their estimates of the unrealized appreciation on lands (reflected in the balance sheets in Exhibit 10), that they furnished the valuation formulas applied in the next to the last paragraph on page 2 of the Report (Exhibit 12B) and the editor merely made the mathematical computations involved in applying the formulas to the figures in the financial statements, estimates and forecasts supplied by the management in Exhibit 10.

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**Excerpts From Exhibits Included in Affidavit of
W. Stevens Tucker**

• • • • •

**Excerpt From Minutes of Special Meeting of Board of
Directors of Producers Life Insurance Company,
Monday, April 27, 1964**

• • • • •

[4] Mr. Johnson then invited Mr. Wallace, to outline for the benefit of the Board the plans which National Securities, Inc., had in mind for the future growth and development of Producers. Mr. Wallace reminded all present that National Securities, Inc., was in fact a holding company and [5] engaged in business as such. He stated that because of the future of National's business it had effective control over subsidiaries many of which are in one form or another engaged in the insurance business and he felt that it was quite clear to any person familiar with the internal operations of a life insurance company that by management of the affairs of Producers, National Securities would be able to perform for Producers all of the services the latter required and effect economics of a magnitude which companies of the size and with the scope of operations of Producers were, generally speaking, unable to effect themselves. This, he noted, required a careful coordination of the home office

affairs and procedures of Producers with those of National Life and Casualty Insurance Company, a subsidiary of National Securities. He said that he envisioned, if the Board of Directors of Producers approved this transaction, that the needed home office personnel, equipment, supplies, and procedures of Producers would be transferred to the home office of National Securities and carefully blended in with the operations of National and its subsidiaries to the end that efficiencies be achieved without sacrificing the separate corporate identity of Producers. He discussed in detail the economies which he felt would be possible.

He noted further that it was the intent of National Securities that subsequently one form or another of corporate reorganization or amalgamation be proposed to the stockholders of Producers. He stated that at the present time he felt it was not particularly important to determine precisely the method to be chosen so long as it was clear that the stockholders of Producers would, at the appropriate time, have proposed to them a specific plan or reorganization as a result of which they would formally join the National Securities group, and be offered the opportunity to convert their present holdings to shares of the Common Stock of National Securities. Substantial discussion ensued during which the directors put questions to Mr. Wallace and Mr. Wallace answered all questions asked of him.

.

EXHIBIT 6

PRODUCERS LIFE INSURANCE COMPANY

Flow Chart of Escrow—April 27, 1964

Item	National Securities		Former Principals		Producers Life		Producers Thrift & Loan		Dependable Life
	Due From	Due To	Due From	Due To	Due From	Due To	Due From	Due To	Due From
1. Cashiers check—\$360,000.00	\$ 360,000.00	\$ 912.05	\$	\$330,000.00	\$	\$	\$	\$ 29,087.95	\$
2. Shares of Producers Life									
27,416 a.		570,000.00	570,000.00						
33,984 a.		372,769.41					372,769.41		
3. Notes by National Securities	583,681.46			240,000.00				343,681.46	
d. Note to Reedy			70,000.00			70,000.00			
e. Note to Producers Thrift						343,681.46	343,681.46		
4a. 40,000 a. Producers Thrift Pfd.					200,667.00			200,667.00	
b-g. Collateral Notes & Assignments					100,479.00			100,479.00	
h. 25,248 a. Producers of Arizona					42,535.46			42,535.46	
5. Shares of Dependable Life									
a. 90,009 Class A				170,000.00	170,000.00				
b. 11,966 Class A					22,616.25				
c. 9,113 Class A)									
d. 1,469 Class B)					20,000.00				
6 a-b. Cash						42,616.25			20,000.00
c-d. Note and assignment—Reedy			100,000.00			100,000.00			
e. Note from Item 3(d)—Reedy			(above)			(above)			
7. 13,588 a. Producers Finance Utah					18,588.00				
8. Cash						13,588.00			13,588.00
9. Producers Life Treasury Stock		742,856.63			742,856.63				
11. (Assumption) Agreement	627,891.76					627,891.76			
17. Note	114,964.87					114,964.87			
	<u>\$1,686,538.09</u>	<u>\$1,686,538.09</u>	<u>\$740,000.00</u>	<u>\$740,000.00</u>	<u>\$1,312,742.34</u>	<u>\$1,312,742.34</u>	<u>\$716,450.87</u>	<u>\$716,450.87</u>	<u>\$33,588.00</u>
Cash or equivalent	\$ 360,000.00	\$ 912.05	\$ 70,000.00	\$570,000.00	\$	\$ 56,204.25	\$343,681.46	\$372,769.41	\$33,588.00
Securities	\$ 698,646.33	\$1,685,626.04	\$570,000.00	\$170,000.00	\$1,312,742.34	\$ 528,646.33	\$372,769.41	\$343,681.46	
Other	\$ 627,891.76		\$100,000.00			727,891.76			
	<u>\$1,686,538.09</u>	<u>\$1,686,538.09</u>	<u>\$740,000.00</u>	<u>\$740,000.00</u>	<u>\$1,312,742.34</u>	<u>\$1,312,742.34</u>	<u>\$716,450.87</u>	<u>\$716,450.87</u>	<u>\$33,588.00</u>
			Securities, per above			\$ 528,646.33			
			Cash out of escrow			170,000.00			
						\$ 698,646.33			
			Cash to Producers Life			4,007.83			
			Marketable securities to Producers Life			\$ 694,638.50			

27, 1984

National Securities		Former Principals		Producers Life		Producers Thrift & Loan		Dependable Life		Producers Finance of Utah	
Due From	Due To	Due From	Due To	Due From	Due To	Due From	Due To	Due From	Due To	Due From	Due To
\$ 860,000.00	\$ 912.05		\$380,000.00				\$ 29,087.95				
	570,000.00	570,000.00									
	372,769.41					372,769.41					
583,681.46		70,000.00	240,000.00		70,000.00	343,681.46	343,681.46				
				200,667.00							
				100,479.00							
				42,535.46							
		170,000.00		170,000.00							
				22,616.25							22,616.25
				20,000.00					20,000.00		
		100,000.00 (above)			42,616.25 100,000.00 (above)			20,000.00		22,616.25	
				13,588.00					13,588.00		
	742,856.63			742,856.63				13,588.00			
627,891.76					627,891.76						
114,964.87					114,964.87						
<u>\$1,686,538.09</u>	<u>\$1,686,538.09</u>	<u>\$740,000.00</u>	<u>\$740,000.00</u>	<u>\$1,312,742.34</u>	<u>\$1,312,742.34</u>	<u>\$716,450.87</u>	<u>\$716,450.87</u>	<u>\$33,588.00</u>	<u>\$33,588.00</u>	<u>\$22,616.25</u>	<u>\$22,616.25</u>
\$ 860,000.00	\$ 912.05	\$ 70,000.00	\$570,000.00	\$	\$ 56,204.25	\$343,681.46	\$372,769.41	\$33,588.00		\$22,616.25	
\$ 698,646.33	\$1,686,626.04	\$570,000.00	\$170,000.00	\$1,312,742.34	\$ 528,646.33	\$372,769.41	\$343,681.46	\$33,588.00			\$22,616.25
\$ 627,891.76		\$100,000.00			727,891.76						
<u>\$1,686,538.09</u>	<u>\$1,686,538.09</u>	<u>\$740,000.00</u>	<u>\$740,000.00</u>	<u>\$1,312,742.34</u>	<u>\$1,312,742.34</u>	<u>\$716,450.87</u>	<u>\$716,450.87</u>	<u>\$33,588.00</u>	<u>\$33,588.00</u>	<u>\$22,616.25</u>	<u>\$22,616.25</u>
	Securities, per above			\$ 528,646.33							
	Cash out of escrow			170,000.00							
				\$ 698,646.33							
	Cash to Producers Life			4,007.83							
	Marketable securities to Producers Life			\$ 694,638.50							

Item	Description	Amount
1	Interest on bonds	\$ 200,000.00
2	Interest on notes	\$ 100,000.00
3	Interest on mortgages	\$ 50,000.00
4	Interest on other securities	\$ 25,000.00
5	Interest on cash	\$ 10,000.00
6	Interest on other assets	\$ 5,000.00
7	Interest on other liabilities	\$ 2,500.00
8	Interest on other items	\$ 1,250.00
9	Interest on other items	\$ 625.00
10	Interest on other items	\$ 312.50
11	Interest on other items	\$ 156.25
12	Interest on other items	\$ 78.12
13	Interest on other items	\$ 39.06
14	Interest on other items	\$ 19.53
15	Interest on other items	\$ 9.77
16	Interest on other items	\$ 4.88
17	Interest on other items	\$ 2.44
18	Interest on other items	\$ 1.22
19	Interest on other items	\$.61
20	Interest on other items	\$.31
21	Interest on other items	\$.15
22	Interest on other items	\$.08
23	Interest on other items	\$.04
24	Interest on other items	\$.02
25	Interest on other items	\$.01
26	Interest on other items	\$.00
27	Interest on other items	\$.00
28	Interest on other items	\$.00
29	Interest on other items	\$.00
30	Interest on other items	\$.00
31	Interest on other items	\$.00
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36	Interest on other items	\$.00
37	Interest on other items	\$.00
38	Interest on other items	\$.00
39	Interest on other items	\$.00
40	Interest on other items	\$.00
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84	Interest on other items	\$.00
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88	Interest on other items	\$.00
89	Interest on other items	\$.00
90	Interest on other items	\$.00
91	Interest on other items	\$.00
92	Interest on other items	\$.00
93	Interest on other items	\$.00
94	Interest on other items	\$.00
95	Interest on other items	\$.00
96	Interest on other items	\$.00
97	Interest on other items	\$.00
98	Interest on other items	\$.00
99	Interest on other items	\$.00
100	Interest on other items	\$.00

EXHIBIT 8

MANAGEMENT AGREEMENT
BY AND BETWEEN
NATIONAL SECURITIES, INC.
AND
PRODUCERS LIFE INSURANCE COMPANY

[1] WITNESS the terms of this agreement made and entered into by and between NATIONAL SECURITIES, INC., a corporation (hereinafter referred to as "National"), and PRODUCERS LIFE INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Arizona (hereinafter referred to as "Producers"), this 30th day of April, 1964.

WHEREAS, The Board of Directors of Producers is composed of persons affiliated with National and its subsidiaries; and

WHEREAS, National through its subsidiaries is the owner of such physical plant and facilities and an employer of such experienced personnel as may be gainfully employed to manage the affairs of Producers; and

WHEREAS, National and Producers each desire at some future date and during the term of this agreement to propose to the appropriate stockholders a corporate reorganization or amalgamation wherein and whereby National directly, or indirectly through its subsidiaries now or hereafter existing, shall acquire ownership of all the assets and assume all the liabilities of Producers; and

WHEREAS, the Board of Directors of each party hereto believes that it is in the best interests of the stockholders of each of the parties hereto and the policyholders of Producers that prior to any such corporate amalgamation or reorganization as aforesaid National shall manage the affairs of Producers, subject to the supervision of the Board of Directors of the latter;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF the foregoing recitals and the mutual covenants

hereinafter set out the parties hereto do mutually agree the one with the other as follows:

National covenants and agrees that:

1. It shall manage Producers in all material respects as a corporation separate and apart from the affairs of its subsidiaries, affiliates or itself.
2. It shall provide the time and effort of trained and capable employees for the performance of all underwriting, processing, servicing and accounting duties and functions normally carried on by life insurance company personnel.
3. It shall employ such personnel of Producers as it may gainfully employ in the supervision and management of the affairs of Producers or any of the affiliates of National.
4. It shall cause to be paid with the funds of Producers all costs of personnel, premium collections, issuance of policy contracts, preparation of records pertaining to policy contracts, office rental, and any and all other costs or expenses incurred by and on behalf of Producers in the operation of its insurance business, to the extent that such funds are available.
5. It shall provide the foregoing personnel, facilities and space at its home office or in its discretion, in any other of its office buildings in Arizona.

[2]

6. It shall accept at its offices payment in any legal form from applicants, policyholders, obligees, or agents, for the benefit of Producers, and deposit such payments in banking or savings accounts of Producers.
7. It shall make payments, in any legal form, to any applicants, policyholders, claimants, beneficiaries, agents, brokers, managers and other sales personnel, in the name and as the act and deed of Producers, for its benefit, in accordance with standard insurance practices, and subject to the supervision of the Board of Directors of Producers.

8. It shall cause to be prepared such financial reports and accounts as shall have heretofore been prepared by Producers, and shall upon request warrant the completeness and accuracy of the same to the stockholders of Producers and the appropriate state departments of insurance.
9. It shall manage the sales personnel of Producers conscientiously and with the intent of retaining and maintaining the aggressive sales program currently in effect for the benefit of Producers, subject to prudent management.
10. It shall issue insurance contracts to applicants, provide service to policyholders and pay or deny benefits or claims of claimants under the terms of insurance policies, all in accordance with standard insurance practices, and under the supervision of the Board of Directors of Producers.
11. It shall maintain reserves of Producers as required.
12. It may sell, offer for sale, purchase, offer to purchase, negotiate, mortgage, rent and in every manner manage the investments, assets and properties (whether real, personal, or mixed) on behalf of Producers, in the same manner as a prudent man in the same or similar circumstances might or would do and it may in no event sell to any of its affiliates any asset of Producers at less than the value at which any such asset is carried on the books of Producers at the time of sale.
13. It may dispose of such assets of Producers as shall not be necessary to maintain Producers' insurance business while operating under the terms and conditions of this agreement, at reasonable and prudent values, provided, however, that it may dispose of any security now owned by Producers, including but not limited to securities of corporations presently or heretofore affiliated with Producers (as the term affiliated is construed by the Securities and Exchange Commission of the government of the United States) to persons interested in buying the same, whether or not such persons have been or are affiliated with Producers, for the value at

which such securities are carried on the books of Producers; nothing herein contained to the contrary withstanding, National shall have and has the authority to sell any securities owned by Producers at less than book value in transactions with persons other than affiliates of Producers or National in the normal course of buying, selling, trading and investing in securities.

[8]

14. It shall pay all taxes, licenses, fees, permits, and other costs of doing business from the funds of Producers by and for and as the act and deed of Producers.
15. It shall cause to be done any and all other acts and cause to be executed any and all instruments deemed reasonable, desirable, convenient, or necessary, whether herein expressly set out or hereafter agreed to, to the end that the best possible management of the affairs of Producers, for its benefit and that of its policyholders and stockholders, shall be the result.
16. It shall propose the corporate amalgamation or reorganization hereinabove referred to to the stockholders of Producers and such stockholders of National, or one or more of its affiliates as may be appropriate, during the term of this agreement.

Producers covenants and agrees that:

1. It shall cause to be delivered to National at its home office all its records now or hereafter in its possession, pertaining to applications, insurance policies, claims, assets, liabilities and reserves and any and all other records requested by National.
2. It shall cause to be delivered to National at its home office any and all furniture, fixtures, equipment, machinery and whatsoever else National deems desirable to possess for the purpose of managing the affairs of Producers under the terms and upon the conditions herein contained.

38. It shall cause to be delivered to National at its home office all its stationery, checks, forms (for policies and other matters) to the end that personnel provided by National may possess, employ and execute them by, for and as the act and deed of Producers.

4. It shall cause to be forwarded to National at its address all correspondence and communications received by Producers and to permit National to alter Producers' mailing address and telephone number and exchange, to the end that all policyholders and members of the public at large receive proper and immediate service in relation to their affairs with Producers.

The parties hereto do mutually covenant and agree that:

1. This agreement shall be liberally construed to permit all necessary and usual services to policyholders, stockholders, and creditors of Producers consistent with economical management of Producers' affairs by National.
2. From the gross receipts of Producers (defined as all receipts of Producers other than proceeds realized from a bulk sale of insurance in force and other than that portion of the proceeds from the sale of any admitted asset represented by its admitted asset value as carried on the books of Producers) there shall be allocated in the following order the sums necessary to:
 - a. Maintain required reserves;
 - [4] b. Make all payments required under any and all policy contracts of Producers, as the same become payable from time to time;
 - c. Contribute to the surplus of the corporation, for its benefit and that of its stockholders, an average of \$7,500.00 per month from and after July 1, 1964, and for each month thereafter during the term of this agreement;
 - d. Meet all other obligations and expenses of the corporation;
 - e. In the event gross receipts of Producers exceed the foregoing sums to be allocated and paid,

any such excess shall be and is the management fee due and shall be paid to National; in the event such gross receipts are insufficient to meet the foregoing sums to be allocated and paid, any deficiency therein shall be made up and paid by National.

3. In addition to the foregoing contribution to the surplus of Producers, its surplus or security valuation reserve shall also be increased (or decreased) by the gain (or loss) realized from the sale of any securities or security instruments (other than agents' balances due Producers) which were owned by Producers as of the day and date first hereinabove written, and its surplus shall be reduced by any and all dividends paid to stockholders and income taxes paid to the United States.
4. The term of this agreement shall be for five years commencing on the day and date first hereinabove written, unless sooner terminated by the consummation of the aforesaid amalgamation or reorganization which shall be construed as terminating this agreement.
5. This agreement shall be binding upon any successor to National with the same force and effect as upon National.
6. In the event either party hereto shall breach this agreement or shall fail to perform any covenant herein agreed to be performed, and any such breach or failure is not remedied within 90 days after notice of the same by the injured party to the party causing the same to occur, the latter party, that is to say, the party causing any such breach or failure to occur and failing to remedy the same as aforesaid shall be then and thereupon indebted to the other party hereto in the amount of: \$450,000 if such breach or failure should occur within the first twelve months of this agreement; \$360,000 if the same should occur in the second twelve months; \$270,000 if the same should occur in the third twelve months; \$180,000 if the same should occur in the fourth twelve months; and \$90,000 if the same should occur in the fifth twelve months; and the

foregoing amounts are hereby deemed to be fair and equitable estimates of damages which each party hereto shall have suffered in the event the other causes such a breach or failure to go unremedied and thereby causes the injured party to restore itself to the position in which it was prior to the execution and carrying into effect of this agreement.

7. If any provision herein contained shall be deemed or construed by a court of law or in equity, or any other tribunal [5] or agency having jurisdiction over this agreement or the parties hereto, to be contrary to law, such construction or determination shall not affect any other provision herein.
8. This agreement shall be without force or effect until the same shall have been approved by the Director of the Department of Insurance of the State of Arizona.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers, duly authorized, and their seals to be hereunto affixed as of the day and date first hereinabove written.

NATIONAL SECURITIES, INC.

By /s/ R. H. Wallace, President
R. H. WALLACE, President

ATTEST:

/s/ George B. Sharp
GEORGE B. SHARP, Secretary

PRODUCERS LIFE INSURANCE
COMPANY

By /s/ Arthur W. Saffert
ARTHUR W. SAFFERT, President

ATTEST:

/s/ Breeferd W. Large, Jr.
BREEFERD W. LARGE, JR., Secretary

APPROVED, this 15 day of May, 1964:

/s/ G. A. Bushnell
GEORGE A. BUSHNELL, Director
Department of Insurance, State of Arizona

EXHIBIT 9**NOTICE OF SPECIAL MEETING OF
STOCKHOLDERS AND PROPOSED MERGER
TO THE STOCKHOLDERS OF PRODUCERS LIFE
INSURANCE COMPANY:**

NOTICE IS HEREBY GIVEN that a special meeting of the stockholders of Producers Life Insurance Company will be held at 10:00 A.M., Mountain Standard Time, on Thursday, December 31, 1964, at Phoenix Little Theater, 25 East Coronado, Phoenix, Arizona, for the purpose of considering the following special topics and such other matters which may properly come before the meeting or any adjournments thereof:

1. The approval of a Consolidation Agreement and Plan of Reorganization dated November 27, 1964, by and between Producers Life Insurance Company and National Life & Casualty Insurance Company, providing for the merger of National Life & Casualty Insurance Company into Producers Life Insurance Company, which shall be the surviving corporation, to be thenceforth known as "National Producers Life Insurance Company".

2. The approval of the resolution of the Board of Directors which authorizes, subject to stockholders' approval of the Consolidation Agreement and Plan of Reorganization, of the payment of a dividend in common stock in the amount of one share for each five shares now outstanding to the stockholders of record as of 10 days following the "final effective date" as defined in this agreement.

3. The approval of an amendment to the Articles of Incorporation to effect a change in the date of the annual meeting from the last Thursday in February to the second Tuesday in June.

4. The approval of a resolution adopted by the Board of Directors amending the Bylaws by increasing its size to nine members and providing in part that the terms of Directors shall be three years with the terms of three Directors expiring each year.

5. The election of a Director to fill the vacancy resulting from such increase.

6. Other business which may properly come before the meeting.

Only stockholders of record at the close of business on December 1, 1964, will be entitled to vote at the special meeting or any adjournments thereof.

The value of the total assets and total liabilities, including required reserves, of Producers Life Insurance Company as of June 30, 1964, are set forth in Paragraph 18 of the Consolidation Agreement and Plan of Reorganization, forming a part thereof. The Consolidation Agreement and Plan of Reorganization is included herewith as a part of this notice.

This notice is dated November 27, 1964.

/s/ Breeferd W. Large, Jr.
Secretary

**CONSOLIDATION AGREEMENT
AND
PLAN OF REORGANIZATION**

WITNESS THE TERMS OF THIS CONSOLIDATION AGREEMENT AND PLAN OF REORGANIZATION made and entered into as of the 27th day of November, 1964, by and between PRODUCERS LIFE INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Arizona (hereinafter called "Producers" or the "surviving corporation"), and NATIONAL LIFE & CASUALTY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Arizona (hereinafter called "National Life"). For the limited purposes set forth herein, including specifically the cancellation of that certain management agreement, dated April 30, 1964, by and between National Securities, Inc. and Producers, NATIONAL SECURITIES, INC., a corporation organized and existing under the laws of the State of Colorado and qualified to

do business in the State of Arizona (hereinafter called "National Securities"), is also a party hereto. The said management agreement is hereinafter called the "Management Agreement."

RECITALS:

1. *Identity of Parties.* Producers, the surviving corporation, was incorporated December 15, 1949, under the insurance laws of the State of Arizona, and National Life was incorporated May 26, 1936, under the insurance laws of the State of Arizona. Producers commenced business on July 31, 1952, and National Life commenced business on September 1, 1936. As of December

3. *The Consolidation Provisions of Arizona Law.* Under provisions of § 20-731A, Arizona Revised Statutes, an Arizona domestic stock insurer of any kind may merge or consolidate with another domestic or foreign stock insurer by complying with the provisions of the Arizona law governing the merger or consolidation of stock corporations formed for profit, subject only to the requirements that no such merger or consolidation shall be effected unless in advance thereof the plan and agreement therefor have been filed and approved in writing by the Director of Insurance of the State of Arizona. By the terms of §§ 10-341 through 10-349, both inclusive, Arizona Revised [2] Statutes, two or more corporations formed for profit may be consolidated and continued as one of the constituent corporations or by forming a new corporation subject to certain requirements, including the submission of the agreement for merger to the shareholders of both corporations and its approval by a vote of not less than $\frac{2}{3}$ rds of the outstanding shares of both corporations.

4. *Principal Purpose of Agreement.* The principal purpose of this Agreement is to provide for the merger of National Life into Producers, which will continue as the surviving corporation, governed by the laws of the State of Arizona.

5. *Secondary Purpose of Agreement.* The secondary purpose of this Agreement is to provide for the cancella-

tion of the Management Agreement by and between National Securities and Producers, subject to the further provisions hereof.

NOW, THEREFORE, for and in consideration of the foregoing recitals and for and in consideration of the mutual covenants and warranties hereinafter set forth, the merging parties hereto, deciding to merge, and National Securities, desiring to bind itself to the terms and conditions hereof as relate to it, agree one with the other as follows:

6. *Merging Parties to Submit Agreement to Director.* Immediately upon execution of this Agreement, National Life and Producers shall join in submitting forthwith a counterpart of this Agreement to the Director of Insurance of the State of Arizona. Each merging party agrees to take every legal and reasonable step to secure approval of this Agreement by the Director of Insurance. Such approval shall be endorsed on a counterpart of this Agreement as a condition precedent to the consummation of the merger; provided, however, that if any modifications of this Agreement are subsequently executed by and between the parties hereto, they shall be immediately submitted by the merging parties in the same manner as the counterpart of this Agreement was submitted, and all legal and reasonable steps to secure approval of any modification shall be undertaken and performed by the merging parties in the same manner as required of them in submitting the counterpart of this Agreement.

7. *Submission to Stockholders.* Immediately upon execution of this Agreement, each merging party shall issue to its stockholders a notice substantially in the form of Exhibit "A", in the case of Producers, and substantially in the form of Exhibit "B", in the case of National Life (but such exhibits shall not be deemed a part of this Agreement for the purpose of subsection 4 of § 10-343B, Arizona Revised Statutes). The special meeting of the stockholders of the companies hereto referred to in Exhibits "A" and "B" shall be held on the same day and at such special meetings this Agreement shall be submitted to the stockholders of each company. At such meeting, if a quorum sufficient to approve this Agree-

ment be present in person or by proxy, this Agreement shall be submitted to the stockholders of the respective companies for approval; if at either meeting a quorum be not present in person or by proxy, this Agreement shall not be submitted at such meeting, but such meeting shall (after consideration of other business) be adjourned, recessed or rescheduled. If this Agreement be approved by the requisite majority (voting in person or by proxy) of both companies, then the day of the later meeting at which such approval was voted shall be, for the purposes hereof, referred to as the "meeting day".

8. *Further Acts of Parties.* Following the meeting day, the merging parties and their officers and directors, shall execute and file all documents and papers necessary and required by the consolidation and insurance laws of the State of Arizona. Such execution and filing shall [3] be accomplished as soon as possible after the final meeting day as can be, and the day upon which the last document, required to be filed by the laws of the State of Arizona to effect a valid merger, is filed shall be deemed for purposes of this Agreement to be the "final effective date". On the final effective date, but nevertheless for all purposes whatsoever as of December 31, 1964, regardless of the actual date, Producers, the surviving corporation, shall become the owner of all assets and assume all liabilities of National Life, including policy liabilities all as of December 31, 1964, and National Life shall cease to exist as a corporate entity.

[6] 20. *Modification or Abandonment of Merger.* Until this Agreement has been approved by the stockholders of either merging party hereto, the parties may (by and through their Boards of Directors) effect reasonable modifications hereof deemed by them to be necessary or desirable, except for changes in the exchange ratio provided for in Paragraph 12 hereof, which shall not be subject to modification. Such modification shall not be effective until approved by the Director of Insurance of the State of Arizona. After this Agreement has been approved by the stockholders of either but not both merging parties hereto, the party which has not obtained stockholder ap-

proval shall have a reasonable time, not to exceed three months, in which to obtain stockholder approval. If at the end of the three months' period (which shall begin as of the date the first merging party obtains its stockholders' approval), the other merging party has not obtained stockholder approval (unless the party obtaining stockholder approval has in writing extended the time in which this Agreement may be performed), this Agreement shall be deemed abandoned and the provisions hereof of no further force and effect. Otherwise, this Agreement shall not be abandoned except as directed in writing by the Director of Insurance of the State of Arizona.

[3] 12. *Manner of Converting the Shares and Assets of National Life.* If this Agreement be approved on the meeting day (as defined herein) by the stockholders of Producers and National Life, Producers shall issue and deliver to the stockholders of National Life shares of the common capital stock of Producers (subject to the provisions of Paragraph 16 hereof) in accordance with the following ratio: for each share of National Life stock now issued and outstanding there shall be issued one share of Producers stock. The shares of National Producers to be issued pursuant hereto shall be deemed to have been issued and outstanding as of the final effective date and shall be issued as soon as may be reasonably convenient thereafter. A National Life stockholder after the final effective date, but before surrender of his National Life share certificates representing validly outstanding shares of common stock of National Life, shall be deemed, for all corporate and legal purposes, to be the owner of that number of National Producers shares to which the formula hereinabove set forth shall provide, but the surviving corporation shall not be required to issue any share certificates to such stockholder until the certificate or certificates representing his National Life shares are surrendered, and his ownership thereof established by the reasonable and customary evidence required for the transfer of corporation shares.

EXHIBIT 10

**PRODUCERS LIFE INSURANCE COMPANY
AN OLD LINE LEGAL RESERVE COMPANY**

2300 N. CENTRAL • PHOENIX, ARIZONA • AL 8-5711 • P.O. Box 1870

November 27, 1964

Dear Stockholder:

Your Board of Directors wholeheartedly recommends your favorable consideration of several proposals of utmost importance to you and your company. These proposals include:

The *merger* of your Company and National Life & Casualty Insurance Company, whereby *Producers Life* will be the surviving company. We would also take 'National' into our name and become 'National Producers Life Insurance Company'. Your Company would have nearly *two-hundred million* of life insurance in force, over *nineteen million* of assets and more than *seven million* per year income;

Immediately upon approval of the merger proposal by stockholders (and their ratification of the Resolution adopted by its Board of Directors) Producers Life will declare a *twenty percent stock dividend* to all stockholders of Producers Life.

The very size of the Company resulting from this merger should improve the image and prestige of your Company, multiply its profit potential, increase its ability to expand into new areas, secure more business from the markets it is currently serving, and improve the market for your stock. All of these factors are discussed in greater detail in this letter. The other proposals are fully described in the enclosed materials (the 'Notice of Meeting' and the 'Consolidation Agreement').

The merger and other proposals will be voted upon at a Special Stockholders Meeting on December 31, 1964. This merger, vital to the future of your Company, can only

become effective upon the approval of two-thirds of the outstanding stock. Therefore your support is of critical importance.

Only the enclosed proxy can be voted in favor of the merger. Even though you may have a proxy on file with the Company, it is necessary that the special proxy enclosed be signed and returned promptly.

[2]

SIZE

The significance of the size of your Company, after the merger, can be more easily appreciated by making certain comparisons. The nearly two-hundred million of insurance in force, over nineteen million of assets and projected 1965 income of more than seven million dollars — means that your Company:

Would have approximately twice the premium income and assets of the next largest Arizona life insurance company;

Would have nearly ten percent of the total insurance in force of all 146 Arizona life insurance companies;

Would rank in the upper 20% of all of the life insurance companies in the United States in insurance in force.

In addition, the merger of two strong, productive sales organizations promises the highest volume of new sales in our history. This sales force of approximately 250 licensed agents can reasonably be expected to write an average of five million of new business per month during 1965—(\$60,000,000 of insurance for the year).

PROFITS

In almost every phase of company operations, this merger should eliminate duplication of work and result in substantially lower operating costs. The effect of anticipated operational economies can easily be seen by reviewing the pro-forma operating statement, which projects management's estimates for 1965, printed at the end of this report. The before-tax net profit from operations for 1965 alone of \$460,00 would be:

Greater than the *total* before tax profits of National Life & Casualty for the past *five years*; and

More than *twice the total* before tax profits of Producers Life for the same five year period.

This comparison can be seen more clearly when itemized by years:

	<u>1959</u>	<u>1960</u>	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>5 Yr. Total</u>
National Life	\$141,903.	\$70,615.	\$ 25,778.	\$189,268.	\$ 8,591.	\$436,155.
Producers	(35,943.)	5,770.	152,781.	127,738.	(20,732.)	229,559.

(The above amounts are the net profits (loss) before Federal Income Taxes as reported on annual statements filed with the Insurance Department.)

The combination of lower operating costs plus higher volume of sales should further strengthen our profit potential for the future.

[3] MARKET FOR YOUR STOCK

In the past, lack of continuous investor interest has resulted in neither Producers Life nor National Life stock having a consistently good market. This is apparent from published market reports contained in our files and available to stockholders on request. Your Board feels that major reasons for this investor apathy were a combination of: Failure to show consistent and increasing profits, lack of size, regionalized sales activities, and lack of a broad market for the stock.

Through this merger your Company will have the size, strength, profit potential and expanding sales activities that should attract substantial investor interest. Your Board firmly believes that *a strong and increasing demand for the stock of your company would move the price of the stock to levels that would be more attractive for all stockholders.*

MANAGEMENT AGREEMENT ENDS

At the time of our affiliation with National Securities, I wrote you that it was our intent to merge Producers Life with National Life as soon as practicable. Meanwhile we

needed a method by which we could work towards an orderly consolidation. This method was the Management Agreement.

Under the Management Agreement it was possible for your company to retain its identity, protect the interests of all stockholders, policyholders and employees, and still have all the advantages of highly efficient and automated facilities. We were able, during the past seven months, to develop many common methods of operation with National Life that are far more effective and efficient than Producers Life had ever known in the past. We were able to develop new insurance policies, competitive rates, and new services for policyholders that brought our two companies closer together. At the same time, we had the services of top men in their fields to help us work towards this merger.

Now we are able to recommend the merger with the firm knowledge that the transition will work fully to the advantage of all stockholders.

[4] NATIONAL SECURITIES' POSITION

With the merger, National Securities will give up its 70% ownership in National Life and its position under the Management Agreement. After the merger, National Securities will own approximately 30% of the outstanding stock in the merged company.

As a minority stockholder, the profits per share on its stock will be exactly the same as on yours. Its interest as a stockholder will be the same as yours in building company earnings for the benefit of all stockholders. National Securities believes, as does your Board of Directors, that the growth and profit opportunities for a company of the size being created by this merger are far beyond what could be expected for the separate companies for many many years to come. *For these reasons National Securities is willing to take a minority position in the merged company.*

BASIS OF THE MERGER.

The merger is proposed on the basis of the relative asset value of the two companies, including the fair value of business in force. Management believes that this method of determining relative value is the most equitable for merger. For an analysis of these values, see the financial statements contained in this report.

The purpose of the proposed stock dividend is to increase your stock ownership in Producers Life and to equalize the per share value of the two companies.

BALANCE SHEETS June 30, 1964

Pro Forma
National Producers
Life Insurance Company
(as if the proposed merger
had been effective
June 30, 1964)

National Life and
Casualty Insurance
Company

Producers
Life Insurance
Company

ASSETS

CASH

\$ 685,118

\$ 269,940

\$ 955,053

AMOUNTS DUE FROM OTHERS:

Real estate loans and contracts
Policy loans

\$2,520,162
1,389,944

\$8,108,883

\$ 5,829,045

Collateral loans

468,687

296,682

1,686,626

Premiums due and deferred

35,203

244,800

244,800

Investment income due and accrued

165,923

633,826

1,102,463

Other

4,579,874

76,532

111,735

INVESTMENTS:

\$1,602,916

206,776

372,704

Stocks and bonds

1,174,566

\$5,265,427

\$ 8,868,337

Stocks of Producers Life

717,043

264,364

1,174,556

Treasury stock

113,850

5,529,791

931,412

Real estate

425,359

85,670

113,850

Other

\$9,298,710

\$10,452,900

\$19,751,610

OTHER ASSETS

TOTAL ASSETS

LIABILITIES

CURRENT TRADE LIABILITIES:

General expenses and taxes payable

\$ 75,775

\$ 74,042

\$ 149,817

Unearned investment income

29,933

6,084

36,022

Amounts held for others

42,854

23,043

65,902

AMOUNTS HELD FOR POLICYHOLDERS:

\$6,267,069

\$5,974,835

\$12,231,904

Policy reserves

422,175

1,416,510

1,838,685

Dividend accumulations

146,758

281,830

428,588

Advance and deposit premiums

38,278

20,495

58,773

Policy claims

\$7,012,847

\$ 7,796,344

\$14,809,691

TOTAL LIABILITIES

SHAREHOLDERS' EQUITY

CAPITAL STOCK

ASSIGNED SURPLUS:

Security valuation reserve

\$ 86,683

\$ 145,384

\$ 85,780

Contingency reserve

1,180,606

821,759

821,759

Reserve for losses on real estate loans

\$86,683

\$567,143

\$507,589

UNASSIGNED SURPLUS:

1,267,289

1,206,937

3,895,907

TOTAL BOOK VALUE

\$2,285,863

\$ 2,656,056

\$ 4,941,919

ADDITIONAL EQUITY VALUES:

\$ 533,875

\$ 279,753

\$ 813,628

Unrealized appreciation of real estate

2,736,000

2,830,000

\$ 6,879,628

Valuation of insurance in force

\$5,555,738

\$ 5,765,809

\$11,321,547

TOTAL EQUITY VALUE

1,018,574

\$ 1,058,371

\$ 2,076,945

SHARES OUTSTANDING (after Stock

\$5.45

\$5.45

\$5.45

Dividend in Producers)

\$5.45

\$5.45

\$5.45

EQUITY VALUE PER SHARE

The above Pro Forma Balance Sheet gives effect as of June 30, 1964, to the following.

- (1) The proposed merger of National Life into Producers Life.
- (2) The proposed 20% stock dividend in Producers Life.
- (3) The proposed reduction of the par value of the stock, after the merger, from \$1 to 50¢.
- (4) The intent of the Company to hold the treasury stock created by the merger, for subsequent public distribution.
- (5) This statement has been prepared to reflect full value of all assets to permit adequate comparison for merger purposes.



[6] **SUBJECTS TO BE VOTED ON AT
SPECIAL MEETING DECEMBER 31, 1964**

- Merger with National Life & Casualty - - - (with Producers Life to be the surviving Company)
- Ratification by stockholders of resolution of the Board of Directors declaring a 20% stock dividend - - - - - (payment of this dividend is subject to the approval of the merger)
- Increase in the Board of Directors to nine - - - (to provide for representation on the Board of all principal departments of our Company's operation)
- Staggering the terms of the Directors - - - (to assure a continuity of policy and operations)
- Change in the date of the annual meeting to the second Tuesday in June - - - (to comply with new regulations expected to become effective in 1965, requiring that audited statements be sent to stockholders 30 days in advance of the annual meeting each year).

MAIL THIS SPECIAL PROXY TODAY

It is extremely important to you and to the other 13,000 stockholders of Producers Life that you send in the enclosed proxy now. *This is the only proxy that can be voted in favor of the merger . . . and the 20% stock dividend is payable only if the merger is approved.*

This merger requires the affirmative approval of stockholders owning two-thirds of the outstanding stock. *Failure to vote is the same as a vote against the merger.* Regardless of whether you have a proxy on file, no proxy other than this *special proxy* can be voted in favor of this merger.

Won't you please sign and mail this proxy today?

/s/ A. W. Saffert

A. W. SAFFERT, President

SUMMARIES OF EARNINGS

(Earnings Before Federal Income Taxes as Reported on Annual Statements to Insurance Departments)

	Year Ended December 31, 1963	(Pro Forma) Year Ending December 31, 1965
	National Life & Casualty Insurance Company	Producers Life Insurance Company
Premiums and other considerations:		
Life insurance	\$2,432,149	\$2,439,904
Accident and health insurance	78,581	173,506
Supplementary contracts	229,113	208,758
	\$2,739,843	\$2,822,168
Net investment income	302,066	397,911
Other income	23,718	
	\$3,060,627	\$3,220,079
Death and other benefits	\$1,133,243	\$ 691,247
Increase in life policy reserves	721,218	996,044
	\$1,854,466	\$1,687,291
Balance	\$1,206,174	\$1,532,788
Commissions	\$ 414,249	\$ 521,650
Salaries and general insurance expense	604,081	843,104
Taxes, licenses and fees	54,592	56,316
Increase in loading on deferred and uncollected premiums	25,432	52,263
	\$1,098,354	\$1,473,333
Total Income from Underwriting and Investment	\$ 107,817	\$ -59,455
Dividends to Policyholders	99,226	85,866
Net Income (Loss) Before Taxes	\$ 8,591	\$ (26,411)
		\$ 460,000

[Entered March 30, 1965]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. Civ-5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., a corporation, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, a corporation, ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRET, JOSEPH B. SETTER, BREEFERD W. LARGE, JR., RICHARD G. JOHNSON, ERNEST A. RICHARDS, WILLIAM A. REEDY, BONNIE B. BILBREY, PRODUCERS LIFE INSURANCE COMPANY, a corporation, and PRODUCERS THRIFT & LOAN COMPANY, a corporation, DEFENDANTS,

TEMPORARY RESTRAINING ORDER

The Securities and Exchange Commission having moved for a temporary restraining order and it appearing to the Court from the complaint for injunction and the affidavit of W. Stevens Tucker filed herein that the defendants National Securities, Inc., a corporation; National Life & Casualty Insurance Company, a corporation, Robert H. Wallace, Robert C. Bohannon, Jr., Arthur W. Saffert, Ted Williams, John S. Barrett, Joseph B. Setter, Breeferd W. Large, Jr., Richard G. Johnson, Ernest A. Richards, William A. Reedy, Bonnie B. Bilbrey, [2] Producers Life Insurance Company, a corporation, and Producers Thrift & Loan Company, a corporation, are engaged and are about to engage in acts and practices which constitute violations of Section 10(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5, to the serious injury and prejudice of Producers Life Insurance Company and its stockholders—

IT IS ORDERED, ADJUDGED AND DECREED that said defendants, and each of them, their agents, attorneys, employees and assigns, and all persons acting in concert or participation with them, be and they are temporarily restrained and enjoined from, directly or indirectly—

A. making use of any means or instrumentality of interstate commerce or of the mails to engage in any manipulative or deceptive device or contrivance, in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5, in connection with the purchase or sale of securities issued or to be issued by Producers Life or National Life or National Securities, or any affiliate or subsidiary of any of such issuers, involving any plan or arrangement between the managing directors of Producers Life and the managing directors of National Securities or National Life to surrender and transfer to National Life the directorships or offices of the managing directors of Producers Life, together with voting proxies sufficient to ensure dominion over and control of Producers Life by National Life and National Securities, or the ultimate merger, consolidation or amalgamation of Producers Life and National Life, in derogation of the rights and interests of the stockholders of Producers Life and in contravention of the fiduciary obligations of the defendants or any of them to Producers Life and its stockholders, a) by employing any device, scheme or artifice to defraud; b) by making any untrue statement of material fact or omitting to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or c) by engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon Producers Life or its stockholders, whether through—

[3]

- (1) the device of a plan of reorganization, consolidation, merger or otherwise, and specifically through implementation or consummation of the Consolida-

tion Agreement and Plan of Reorganization executed by Producers Life Insurance Company, National Life Insurance Company and National Securities, Inc., dated November 27, 1964; or

- (2) the solicitation of proxies or votes of stockholders to be used to accomplish any such plan of reorganization, consolidation or merger; or
- (3) any untrue statement of material fact or omission to state any material fact, necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, with respect to:
 - (a) the dollar amount of any liabilities or obligations assumed or to be assumed by Producers Life or the surviving company in any merger involving Producers Life;
 - (b) the assets, liabilities, capital, surplus or deficit, income or losses of Producers Life or National Life or of any other company with which it may be proposed to merge or combine Producers Life;
 - (c) any transaction which materially affect the assets, liabilities, capital surplus or deficit, income or losses of Producers Life, National Life, or of any other company in which it may be proposed to merge, combine or consolidate Producers Life; or
 - (d) any forecast as to the earnings, income or amount of business of Producers Life, National Life or of any surviving company into which Producers Life may be merged, combined or consolidated;

[4] or engaging in any act, practice or course of business of similar object or purport; or

B. voting or causing to be voted any proxies executed by stockholders of Producers Life which have been received by the defendant Wallace from the defendants Johnson, Richards or Reedy;

C. voting any proxies executed by stockholders of Producers Life appointing the defendants Saffert and Wal-

lace, or either of them, which were solicited or received subsequent to April 27, 1964;

D. voting any of the 185,008 shares of stock of Producers Life held by National Life as of December 31, 1964; or

E. performing any act which facilitates or is designed to facilitate the consummation of the Consolidation Agreement and Plan of Reorganization dated November 27, 1964, between Producers Life, National Life, and National Securities.

This temporary restraining order shall expire at 4:50 P.M. on April 9th, 1965, unless otherwise ordered by the Court for good cause shown.

Dated March 30, 1965, at 4:50 P.M.

Presented by:

/s/ W. Stevens Tucker
W. STEVENS TUCKER
Of Counsel for the United States
Securities and Exchange Commission

/s/ [Illegible]
United States District Judge

59
[Filed April 13, 1965]

[Excerpts From Exhibits Included in Supplemental
Affidavit of W. Stevens Tucker]

EXHIBIT A

PRODUCERS LIFE INSURANCE COMPANY
AN OLD LINE LEGAL RESERVE COMPANY
2300 N. CENTRAL • PHOENIX, ARIZONA • AL 8-5711 • P.O. Box 1870

January 1, 1965

STOCKHOLDERS GIVE MANAGEMENT
OVERWHELMING SUPPORT

Stockholders voted two to one in favor of Producers Life management on every issue voted on at the December 31, 1964 special meeting.

Management's candidate to the Board of Directors, Joseph C. Shorrock, was elected by a vote of 536,787 to 222,820.

Management's proposal to stagger the terms of the members of the Board to provide for a continuity of management was approved by a vote of 542,384 to 217,329.

Management's proposal to move the date of the annual meeting to June was approved by a vote of 542,172 to 217,487.

Unfortunately, because of the snarl of last minute legal actions filed by the 'stockholder's committee', the merger was not voted on. This legal tangle was created by the 'committee' just two days before the meeting, as the 'committee' was rapidly losing stockholder support.

The meeting was recessed and will be re-convened as soon as practical for the vote on the merger. We are as anxious as you are to have the merger approved.

While we believe there is not one chance in a thousand that any of these desperation legal maneuvers by the

'committee' can succeed, we did not wish to hazard the problems of "un-merging" the two companies. Therefore, management believes it best to have the short delay.

[EXHIBIT C-2]

[Producers Life Insurance Company]

[Headquarters Report]

CUTTING COSTS . . . INCREASING PROFITS

National Securities headquarters serves all affiliated companies including Southwest Savings & Loan Association, Tucson Title Insurance Company, Western States Title Insurance Company, Associated Mortgage & Investment Company, and National General Agency . . . in addition to Producers Life and National Life. These affiliated companies have more than \$75 million dollars in assets.

Individually, the companies are of moderate size. Collectively they represent a powerful financial force with impressive resources. Through the centralization of major equipment and top personnel, every affiliate has access to all available services and facilities. This centralization at National Securities has created an impressive, modern, headquarters nerve center giving all companies better customer service, more efficient operations and lower overhead expenses than they could afford individually.

The computer facilities are an excellent example of this. Producers Life never had computers. All clerical and accounting tasks were done by hand, or by standard accounting and processing machines. Today, computers calculate and print over 100 different projects per month directly on forms for mailing to policyholders or processing at the Home Office. Computers make two-million-four-hundred-thousand (2,400,000) calculations per minute . . . read 450 policies per minute . . . and print information in the form of words and numbers at the rate of 600 lines per minute.

[2]

TOP PERSONNEL

[3]

IMPROVING SALES POTENTIAL

Five insurance companies are in the National Securities group, so it is not strange that the headquarters staff includes top, nationally known and respected insurance personnel. In fact, this is a primary reason why former Producers Life management came to National Securities when they decided to step down.

This headquarters group includes life insurance specialists in accounting, auditing, advertising, sales promotion, actuarial science, data processing, investments, administration, personnel and other important phases of corporate activities. Producers Life could never afford to maintain a staff of this magnitude, yet your company has the services of all these people available at all times. This advantage is matched by very, very few companies. The cost of this headquarters staff is shared by all National Securities companies and your company draws on those people and those talents it needs.

For Producers, this concentration of top personnel has already had some important benefits.

For example, within six months the National Securities headquarters staff had changed Producers Life to the 1958 CSO tables which immediately put your company in a better competitive position through more competitive life insurance rates. Also within six months, this staff added over 45 new policies to those offered by your company, put new audio-visual materials in the hands of salesmen, and developed an entire series of sales promotion materials to help your salesmen do a more effective selling job. In nine months, new payment plans were introduced for policyholders, new sales advance plans were in effect and new, faster, more efficient systems developed and in operation for billing, delinquency notices, etc.

This is only a sample of the way in which the National Securities headquarters group is capable of producing swift, profitable results for the merged company.

[8] MAKING COMPANIES GROW

For an idea of what can happen in the future for the merged company, you can look back on what *has* happened to other National Securities affiliates. Here you can see how the National Securities headquarters operations and practices put companies in excellent positions to move forward quickly for the benefit of stockholders.

Southwest Savings. Acquired in 1960. Assets at that time were approximately six million dollars. Today, assets are over fifty million dollars . . . an increase of over 800%. Since 1960, assets per share have increased 524%; savings have increased 574%; reserves, capital, surplus and undivided profits have increased 852%. One office in 1960 has grown to five offices today.

Associated Mortgage & Investment Company. Founded in 1957. Since 1960, assets have increased 2,772%. Mortgage loan service portfolio has increased 67%. Company has expanded into Tucson, Salt Lake City, Los Angeles.

Tucson Title Insurance Company. Acquired in 1962. Today it is the largest title company in southern Arizona, doing over 80% of the total volume of the Tucson area.

Western States Title Insurance Company. Acquired in 1963. Since then, sales have increased 42%, profits are up 11% and the company has expanded into Ogden and Bountiful. Western States is the largest title insurance underwriter in Utah. Headquarters are in Salt Lake City.

National General Agency. Founded in 1963 as a managing general agency in the fire and casualty fields. Currently specializing in serving affiliated companies with plans being finalized for expansion into other areas.

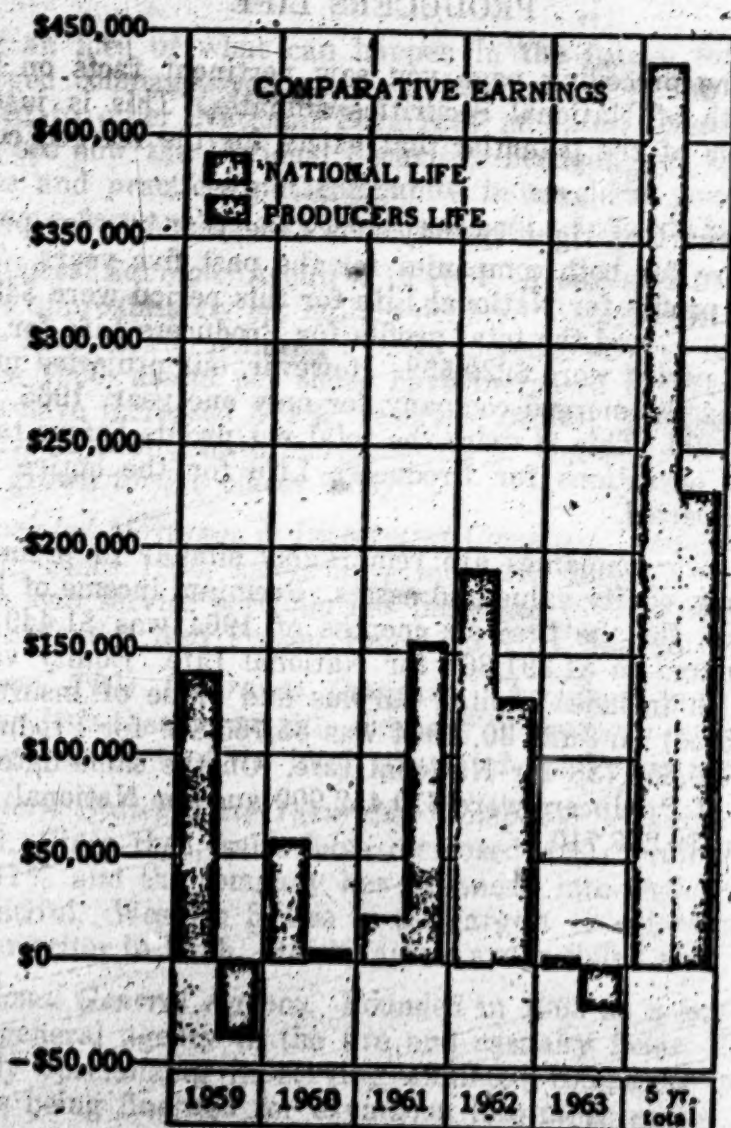
[4]

**NATIONAL LIFE AND
PRODUCERS LIFE**

On the preceding page you saw pertinent facts on the growth of National Securities affiliates. This is just a sample of the potential that exists for the merged company.

The chart at right [p. 64] shows the year-by-year profit picture for both companies for the past five years. The total profits for National Life for this period were \$436,155 and the total profits for Producers Life for the same period were \$229,559. However, our projected profits for the merged company for only one year, 1965, are \$460,000. This is twice the total net profits before taxes from operations for Producers Life for the entire five year period.

The two companies are remarkably similar in premium income, equity value and assets. Premium income of Producers for the first six months of 1964 was \$1,440,049 compared to \$1,391,867 for National Life. Equity value (which includes capital, surplus and value of insurance in force) on June 30, 1964 was \$5,765,809 for Producers and \$5,555,738 for National Life. On the same date assets of Producers were \$10,452,900 and for National Life were \$9,298,710.



(The above amounts are the net profits (loss) before Federal Income Taxes as reported on annual statements filed with the Insurance Department.)

[Filed April 15, 1965]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. Civ.-5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., a corporation, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, a corporation, ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRET, JOSEPH B. SETTER, BREEFERD W. LARGE, JR., RICHARD G. JOHNSON, ERNEST A. RICHARDS, WILLIAM A. REEDY, BONNIE B. BILBREY, PRODUCERS LIFE INSURANCE COMPANY, a corporation, and PRODUCERS THRIFT & LOAN COMPANY, a corporation, DEFENDANTS

ANSWER OF THE DEFENDANTS NATIONAL SECURITIES, INC., NATIONAL LIFE & CASUALTY INSURANCE COMPANY, ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRETT, JOSEPH B. SETTER, BREEFERD W. LARGE, JR. AND PRODUCERS LIFE INSURANCE COMPANY

Defendants listed above, for brevity hereafter called the National Securities-Producers Group, for their answer allege:

1. This Court has no jurisdiction of this matter, the matters complained of not in fact being within any jurisdiction given to the Court under the Securities Act of 1934.

2. The complaint fails to state a claim upon which relief can be granted.

In addition, the defendants for further answer, following the unit numbers of the complaint herein, answer as follows:

I

1. The allegations of paragraph 1 are denied in all respects, including expressly a denial that it "appears to the Securities and Exchange Commission." The defendants allege that they have made their best efforts to determine whether at the time of filing this complaint the matter involved did "appear to the Securities and Exchange Commission" and have been unable to do so. Therefore, being unable to form a belief, they expressly deny this allegation.

2. Paragraph 2 alleges that this action arises under Sec. 21(e) of the Act, 15 U.S.C. Sec. 78(e). Defendants assume that this is a typographical error and that the section intended is 15 U.S.C. Sec. 78(u)(e). The defendants deny, as set forth in the preceding paragraph, that this matter does "appear to the Commission" and in any case deny that any matter is alleged which, even if proved, would constitute violation of the provisions of this chapter.

3. The allegations of paragraph 3 are denied.

II

1. The allegations of paragraph 1 are admitted.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are admitted except insofar as the paragraph alleges that these various persons are subject to the direction and control of the defendant Wallace, and in this respect, the paragraph is denied; and it is further denied that Mr. Bohannon is an Executive Vice President of National Life; or that Wilkins was employed as alleged.

4. The allegations of paragraph 4 are admitted.

5. The allegations of paragraph 5 are admitted insofar as they allege that these were the Board of Directors at the time in question; as to the remainder concerning the control and management of the corporation, these defendants do not have sufficient information to form a belief.

6. The allegations of paragraph 6 are admitted.

7. The allegations of paragraph 7 are admitted insofar as the number of shares owned by the named persons. As to the "control" of the shares of Producers Thrift, this relates to the internal management of this corporation and these defendants have not sufficient information or belief to plead thereto. However, it is believed that the number of shares to which the plaintiff meant to make reference was 38,984 instead of 38,904 as pleaded.

8. The allegations of paragraph 8 are admitted.

III

1. The allegations of paragraph 1 are denied in each and every particular.

2. The allegations of paragraph 2 are so multifarious that defendants are compelled to plead in respect to lines or parts thereof and therefore plead as follows:

(a) The defendants are without sufficient information to form a belief as to the relationships of the "selling directors" to Producers Life although they deny the implication that the phrase "selling directors" is an appropriate description of these persons.

(b) Defendants deny that there was anything contrary to the fiduciary obligations, if such there were, on the part of the "successor directors" as set forth in Lines 30 and 31 of page 3 and Line 1 of page 4.

(c) The defendants deny that the transaction was undertaken for the ultimate purpose of accomplishing the merger, etc., as set forth in Lines 3-8 of page 4, this being instead a subsequent development.

(d) The defendants admit that sales and transfers were made as set forth in Lines 11-15 of page 4.

(e) The defendants deny that there was any sale of directorships and offices or proxies as set forth in Lines 17-21 of page 4.

(f) The defendants admit the allegations of Lines 23-26 of page 4.

(g) The defendants admit the allegations of Lines 28-32 of page 4.

(h) The allegations of Lines 1-7 on page 5 are admitted.

(i) Lines 9 and 10 of page 5 are denied.

(j) It is denied that at the time of the transaction in question there was a plan of the sort specified in Lines 15-18, and the allegation that there was a so-called "scheme" on Line 18 of page 5 is especially denied as an offensive choice of words on the part of pleader.

(k) The allegations of Lines 20-23 on page 5 are denied, and all other allegations of paragraph 2 are denied.

3. The defendants admit that there were meetings on April 27, 1964 of the directors of National Securities and of Producers Life. These defendants have not sufficient information to form a belief as to whether there were or were not meetings of the directors of Dependable Life and Producers Thrift. All other allegations of paragraph 3 are denied.

4. The allegations of paragraph 4 are admitted and denied in accordance with the various admissions and denials of the preceding paragraphs to which this refers.

5. The allegations of paragraph 5 are denied as they are deliberately misleading and a palpably partial statement of the facts, there being substantial other consideration for the transfer in question, all of which is well known to the plaintiff; and the allegations as to market value are denied.

6. It is denied that National Securities "purported to assume" the obligations and direction, the fact being that they were assumed. The remaining allegations of paragraph 6 are denied.

7. It is admitted that a non-compete agreement was entered into between National Securities, Inc. and certain directors and their successors or assigns. It is denied that there was any provision as alleged for some emerging entity and it is further denied that there was any agreement with Dependable in this respect. The remainder of the paragraph is denied.

8. The allegations of paragraph 8 are denied, the fact being that National Securities agreed to pay \$942,769.41 for 66,400 shares, or an average of \$14.20 a share. No part of the agreement governed how this sum should be

allocated among the sellers and this was in fact of no concern to these defendants. \$57,230.59 was subsequently paid for 10,376 shares.

9. The allegations of paragraph 9 are denied, the fact being that National Securities agreed to pay \$942,769.41 for 66,400 shares, or an average of \$14.20 a share. No part of the agreement governed how this sum should be allocated among the sellers and this was in fact of no concern to these defendants. \$57,230.59 was subsequently paid for 10,376 shares.

10. It is admitted that the named persons did resign and that the other named persons were elected to the positions of directors and the allegations are otherwise denied.

11. It is admitted that Messrs. Saffert, and Large, were elected to the offices named and the allegations of paragraph 11 are otherwise denied.

12. The allegations of paragraph 12 are denied except that proxies were in fact substituted.

13. The allegations of paragraph 13 are denied except that an agreement was entered into.

14. It is admitted that the books and records were moved to the premises of National Life, in which offices have been maintained for Producers and the allegations are otherwise denied.

15. In regard to the allegations in paragraph 15, these defendants allege as follows:

The resignation of J. Grant Iverson was accepted by the Board of Directors of Producers Life on June 5, 1964; that the resignations of John J. Faleoner and Jess Hunter were accepted by that Board on May 28, 1964; that defendant Robert C. Bohannon, Jr. was appointed assistant secretary on May 28, 1964; that the defendant Ted Wilkins was appointed to the Board of Directors on June 5, 1964; that defendant Robert H. Wallace and Ron Larson were elected to the Board of Directors on November 27, 1964; that Mr. Robert Sampley was appointed to the Board of Directors on October 15, 1964. The allegations of paragraph 15 in conflict with the allegations herein are denied. The allegation in paragraph 15 regarding the duties of the defendant Bohannon is admitted.

16. The allegations of paragraph 16 are admitted.
17. The allegations of paragraph 17 are denied in that this plan was wholly independent of the action of April 27, 1964.
18. The defendants admit that on November 27, 1964 a consolidation agreement was in fact submitted to the stockholders of Producers Life along with a notice of meeting and a solicitation of proxies although they deny that this was in furtherance of any plan of April 27, 1964, it being independent thereof. These defendants decline to admit or deny as to the material set forth in lines 12-32 of paragraph 18, page 9, and lines 1-5 on page 10, the agreement which these lines purport to summarize being clearly the best evidence of its content. The defendants expressly deny that any matter has not been disclosed which should have been disclosed.
19. The allegations of paragraph 19 are admitted, the recess being subject to the call of the Chair on reasonable notice.
20. The allegations of paragraph 20 are denied insofar as they purport to attribute the activities therein contained to either National Securities or National Life, and it is further denied that the defendant Bohannon had any connection whatsoever with the meetings therein involved, all activities covered in this paragraph being those of Producers and its management. It is admitted that a notice was sent with the signatures alleged.
21. The defendants admit that a copy of the North Report was sent out with the proxy solicitation, this having been in all respects a proper and appropriate thing to do. They deny that this was in furtherance of the so-called "scheme and plan" for reasons previously set forth. They deny that the report was in any respect misleading as to their own connection with it, the report on its face making completely clear that the underlying information was obtained from these defendants. The North Report expressly stated that the "information contained in this report was obtained primarily from the company and sources close to the company and has not been otherwise verified although believed to be authentic." The statement as published contained a second express black-

bordered announcement by Producers putting the proper limitations upon any assurances made as to the North Report.

22. The allegations of paragraph 22 are denied.

AFFIRMATIVE DEFENSE

As an affirmative defense, if such it should be, these defendants allege:

1. There is pending a vote of the shareholders of Producers Life as to whether they wish to approve a merger with National Life.

2. The National Securities group owns approximately 15% of the stock of Producers Life. Under the laws of the State of Arizona, the vote of 66-2/3% of all of the outstanding stock of Producers would be required to approve the merger.

3. If the merger should not be approved, most of the issues involved in this injunction action will become moot. If it should be approved, the vote of a majority of the Producers shareholders other than the National Securities group will be required.

4. Nothing in any law administered by the plaintiff or in any regulation issued thereunder, bears upon any matter concerned in this purported merger vote by the two insurance companies.

Wherefore, it is prayed that the plaintiff take nothing by its complaint, and that the temporary restraining order issued herein be quashed, and that the complaint be dismissed.

Respectfully submitted,

LEWIS ROCA SCOVILLE
BEAUCHAMP & LINTON

By _____
JOHN P. FRANK

/s/ Jeremy Butler
JEREMY BUTLER

[Filed April 16, 1965]

AFFIDAVIT OF ROBERT H. WALLACE

3. At no time between March 15, 1964 and April 27, 1964 or at any other time, did he or any affiliated person or corporation conduct or carry on any negotiations with Messrs. Johnson, [2] Richards, Reedy or Bilbrey for merger of National Life with Producers Life.

[PARTIAL TRANSCRIPT OF PROCEEDINGS ON APPLICATION FOR PRELIMINARY INJUNCTION]

[15] THE COURT: * * * *

What they are going to do, as I understand it, they will probably hold this meeting and try to vote this stock and put through this matter, go over to the Insurance Commissioner. They have stipulated that any opponents will have a week. Isn't that it?

MR. FRANK: That's right, your Honor.

THE COURT: After the matter is approved by the stockholders, if it is approved?

MR. FRANK: Yea.

THE COURT: In which to apply to the Insurance Commissioner for a hearing before anything is done. And I assume that the minority stockholders, unless they are happy after all this, will probably go to the Insurance Commissioner, ask for a hearing, and then the wheels start to turn. And any time during the period, if the Commission is unhappy or feels that the public interest is not being served, I will be ready at any [16] time to hear you, on any notice practically. We will continue this matter for a further hearing, subject to application by any party, upon such notice as the rules fix, and upon such notice as the parties may stipulate, or upon such notice as the Court make take.

[19] MR. TUCKER: Let's say that in being confronted with this proposed stipulation, it is my understanding that Mr. Frank would interpret the order as if, in the form in which it would remain; amended by the changes that have been suggested, they would be at liberty to proceed to vote the proxies and would be at liberty to proceed to hold the meeting, they would be at liberty to proceed to take whatever further steps they contemplate to consummate the merger agreement; and if we were to come in—

THE COURT: They would be permitted to hold the meeting and to vote the proxies, and that the stockholders vote to approve the merger, to present it to the Insurance Commissioner for his approval or disapproval.

MR. FRANK: Your Honor, the stipulation—

[20] THE COURT: Beyond that, if there is any opposition, they could certainly make it known to the Director of Insurance, and all that machinery can be put in motion.

* * * *

[22] THE COURT: All right. I say that under my interpretation of it—I don't know how many times I must say it—under my interpretation of it, you can hold your meeting, you can vote your proxies, you can submit it to the Insurance Commissioner or Director of Insurance.

All right, now, are you going to say anything more in opposition to what you handed up to me here?

MR. FRANK: Your Honor, at that point we are indeed content.

* * * *

[50] THE COURT: Are you gentlemen leaving it for what is shown by the record with respect to the action of the Director of Insurance?

MR. TUCKER: I don't—

THE COURT: The agreement to withhold it for a week, and so forth? You are leaving that for what is shown on the record, I take it?

MR. TUCKER: I don't quite understand the thrust of your Honor's question.

THE COURT: It is not included in this motion and order, but it was agreed that the action of the Director

of Insurance—or the application will not be presented—How do you expect—

MR. FRANK: Your Honor, I had assured the Court earlier, and I accept with pleasure the courtesy of Mr. Tucker in taking my word for it on the record, that we shall not make application to the Director of Insurance to approve the merger under the statute, until at least a week after the matter is determined by the shareholders, if it is determined by the shareholders. And I have further said that I will give [51] telegraphic notice to Mr. Tucker, personally, at least a week in advance of our making such an application, so that he will be fully acquainted with any action we are taking in that regard.

MR. TUCKER: I think that counsel's assurances are entirely satisfactory to us, your Honor.

THE COURT: Very well. I am sure the record does show it, if not expressly, implicitly. But I am not ruling on the sufficiency or insufficiency of any proxy or of any action that has been taken or proposed to be taken, or as to the sufficiency of any notice of any meeting or of any continued meeting, or any of those matters.

MR. FRANK: It is fully understood, your Honor.

MR. TUCKER: It is understood, your Honor.

THE COURT: In other words, I don't want, for instance, any superior court judge to think that I am ruling on any of those matters, corporate procedural matters that might be presented to him upon a review of the Director of Insurance's order, or any of those matters.

As I recall, this meeting has been continued from time to time?

MR. FRANK: That's right. Your Honor, one other matter which I would like clear, if I may, as we [52] tidy the record, of exactly the sort we have been speaking of. We have during this extended argument indulged in many hypotheses as to possible fraud. I take it that we may rest assured that these are hypotheticals only, and that your Honor has not at any point meant to indicate that he was accepting either side's views as to the facts of the matter, and that no language should be taken out of context from this transcript indicating to the contrary.

THE COURT: I certainly didn't intend to—All that I am doing is lifting a partial restraint.

MR. FRANK: Yes. Very satisfactory.

THE COURT: Permitting things to happen if other people decide they are to happen, without any expression in any way of any opinion at all on the merits.

MR. FRANK: This is completely understood, and on behalf of our table we thank you for giving us what has been a very long day and a hard one.

THE COURT: It is a difficult matter. There may come a question, of course, before the Commissioner and before the state courts, perhaps, before I ever hear of this matter again, which involves, as I say, the validity of these proxies mentioned here, some of them, the validity of the contracts, procedure, corporate [53] procedures and other matters, notices of hearing, meetings.. I have not and do not intend at this time to express any opinion whatever.

[Entered April 16, 1965]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

No. Civ. 5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., a corporation, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, a corporation, ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRET, JOSEPH B. SETTER, BREEFERD W. LARGE, JR., RICHARD G. JOHNSON, ERNEST A. RICHARDS, WILLIAM A. REEDY, BONNIE B. BILBREY, PRODUCERS LIFE INSURANCE COMPANY, a corporation, and PRODUCERS THRIFT & LOAN COMPANY, a corporation, DEFENDANTS

**ORDER AND JUDGMENT DROPPING
DEFENDANTS**

The Motions of defendants RICHARD G. JOHNSON, ERNEST A. RICHARDS, WILLIAM P. REEDY, BON-

NIE B. BILBREY and PRODUCERS THRIFT & LOAN COMPANY, a corporation, to be dropped as defendants herein and to dismiss the complaint as to said defendants having come on regularly to be heard, and having been duly argued and the Court being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants RICHARD G. JOHNSON, ERNEST A. RICHARDS, WILLIAM P. REEDY, BONNIE B. BILBREY and PRODUCERS THRIFT & LOAN COMPANY, a corporation, be and the same hereby are dropped from the above entitled action, and that the complaint herein be, and the same hereby is, dismissed, without prejudice and without prejudice to plaintiff's right to hereafter move to add the above-named defendants as defendants herein, as to defendants RICHARD G. JOHNSON, ERNEST A. RICHARDS, WILLIAM P. REEDY and BONNIE B. BILBREY, and PRODUCERS THRIFT & LOAN COMPANY, a corporation.

DATED this 16th day of April, 1965.

/s/ Wm. C. Mathes
U. S. District Judge

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[Entered April 16, 1965]

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

No. Civ-5466-Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

**NATIONAL SECURITIES, INC., a corporation, et al,
DEFENDANTS**

MOTION AND ORDER

The Defendants National Securities, Inc., National Life & Casualty Insurance Company, Robert H. Wallace, Robert C. Bohannon, Jr., Arthur W. Saffert, Ted Wilkins, Don S. Barret, Joseph B. Setter, Breeferd W. Large, Jr., and Producers Life Insurance Company respectfully move this Court that the temporary restraining order previously entered in this cause be vacated except for the language following, which shall be kept in effect pending further hearing which may be instituted upon application of any of the parties. This continuance shall be without prejudice to the claims of any of the parties as to the jurisdiction of this Court or as to the applicable law. The portion of the restraining order to be continued in effect on this motion is as follows:

"IT IS ORDERED, ADJUDGED AND DECREED that said defendants, and each of them, their agents, attorneys, employees and assigns, and all persons acting in concert or participation with them, be and they are temporarily restrained and enjoined from, directly or indirectly—

"A. making use of any means or instrumentality of interstate commerce or of the mails to engage in any manipulative or deceptive device or contrivance, in violation of Section 10(b) of the Securities Exchange Act of 1934, 15.U.S.C. 78j(b), and Rule 10b-

5 thereunder, 17 CFR 240.10b-5, in connection with the purchase or sale of securities issued or to be issued by Producers Life in derogation of the rights and interests of the stockholders of Producers Life and in contravention of the fiduciary obligations of the defendants or any of them to Producers Life and its stockholders, a) by employing any device, scheme or artifice to defraud; b) by making any untrue statement of material fact or omitting to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or c) by engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon Producers Life or its stockholders."

Respectfully submitted,

LEWIS ROCA SCOVILLE
BEAUCHAMP & LINTON

By _____
JOHN P. FRANK

ORDER

The foregoing motion having been heard,

IT IS HEREWITH ORDERED that the temporary restraining order previously entered is vacated except as to the portions set forth in the motion, as to which it is continued pending further hearing which may be instituted upon application by any of the parties. This continuance shall be without prejudice to the claims of any of the parties as to the jurisdiction of this Court or as to the applicable law.

DONE IN OPEN COURT this 16th day of April, 1965.

/s/ William C. Mathes
District Judge

[Entered July 13, 1965]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. Civ. 5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., a corporation, NATIONAL
LIFE & CASUALTY INSURANCE COMPANY, a corporation,
ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR.,
ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRET,
JOSEPH B. SETTER, BREEFERD W. LARGE, JR., and
PRODUCERS LIFE INSURANCE COMPANY, a corporation,
DEFENDANTS

ORDER ON MOTIONS PRESENTED JULY 12, 1965

This matter having come before the undersigned Judge sitting in the United States District Court for the District of Arizona, on the 12th day of July, 1965, at San Francisco, California, pursuant to stipulation, upon the

(1) Motion of the Securities and Exchange Commission for Reopening of Hearing on Motion for Preliminary Injunction and for Additional Relief Pendente Lite,

(2) Defendants' Motion to Dismiss plaintiff's complaint,

(3) Defendants' Motion to Strike Plaintiff's Motion for [2] Production of Documents for Inspection and Copying, and

(4) Motion of the Securities and Exchange Commission for Production of Documents Under Rule 34,

Plaintiff appearing through Mr. W. Stevens Tucker and Mr. James G. Newby, its attorneys, the defendants ap-

pearing through Mr. John P. Frank and Mr. Jeremy Butler, their attorneys, and the Court having received the statements of counsel and having considered the documents in the record and the proceedings before it, and

It having been stipulated that the Securities and Exchange Commission may file herein an amended and supplemental complaint within the period of thirty days from the date of this order and that the defendants may have a period of thirty days from receipt of a copy of such amended and supplemental complaint in which to respond thereto, and

It appearing that the parties also have stipulated for the production of the documents requested by the Securities and Exchange Commission, in accordance with the oral ruling of the Judge from the bench on July 12, 1965, and

The matters having been continued to and heard further on July 13, 1965, now therefore

IT IS ORDERED that:

(1) The Securities and Exchange Commission may serve and file its amended and supplemental complaint herein within thirty days from the date of this order,

(2) The defendants shall have a period of thirty days from the receipt of a copy of such amended and supplemental complaint in which to serve and file herein and serve any motion or other responsive matter,

[3] (3) The defendants' Motion for Dismissal of the Complaint and the Securities and Exchange Commission's Motion for Reopening Hearing on Preliminary Injunction and for Additional Relief Pendente Lite are both placed off calendar without prejudice to the right of either party to apply to the Court for reinstatement and consideration.

Dated July 13th, 1965.

/s/ Wm. C. Mathes
United States District Judge

[Filed August 12, 1965]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. 5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., a corporation, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, a corporation, ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRETT, JOSEPH B. SETTER, BREEFERD W. LARGE, JR., and PRODUCERS LIFE INSURANCE COMPANY, a corporation (also known as NATIONAL PRODUCERS LIFE INSURANCE COMPANY), DEFENDANTS

AMENDED AND SUPPLEMENTAL COMPLAINT
FOR INJUNCTION

I

1. It appears to the Securities and Exchange Commission, plaintiff herein, that the defendants National Securities, Inc., a corporation ("National Securities"), National Life & Casualty Insurance Company, a corporation ("National Life"), Robert H. Wallace ("Wallace"), Robert C. Bohannon, Jr. ("Bohannon"), Arthur W. Saffert ("Saffert"), Ted Wilkins ("Wilkins"), John S. Barrett ("Barrett"), Joseph B. Setter ("Setter"), Breeferd W. Large, Jr. ("Large"), and Producers Life Insurance Company ("Producers Life"), a corporation, have engaged and are about to engage in acts and practices which constitute violations of Section 10(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78j(b), and Rule 17 CFR 240.10b-5.

2. This action arises under Section 21(e) of the Act, 15 U.S.C. § 78u(e).

3. This Court has jurisdiction of this action under Section 27 of the Act, 15 U.S.C. § 78aa.

II

1. The defendant National Life is an Arizona corporation engaged in the life insurance business in Arizona and other western states.

2. The defendant National Securities is a Colorado corporation transacting business in Arizona as a holding company owning a majority of and the controlling interest in the stock of National Life.

3. At all times material hereto, the defendant Wallace has been president, chief executive officer and a director of National Securities and National Life; the defendant Bohannon has been executive vice-president of National Securities and National Life; the defendant Saffert has been employed by National Life as an actuary; and the defendants Wilkins, Barrett, Setter and Large have been employees of National Securities, or of National Life or of another subsidiary of National Securities, and subject to the direction and control of the defendant Wallace as principal executive officer of National Life and National Securities.

4. The defendant Producers Life is an Arizona corporation engaged in the life insurance business in Arizona and other western states. Since July 9, 1965, this corporation has been known as National Producers Life Insurance Company ("National Producers Life").

5. Prior to April 27, 1964, Richard G. Johnson ("Johnson"), Ernest A. Richards ("Richards"), William A. Reedy ("Reedy") and Bonnie B. Bilbrey ("Bilbrey"), sometimes hereinafter referred to as "selling directors", controlled and managed the business and affairs of Producers Life. They, together with J. Grant Iverson, Jess E. Hunter and John J. Falconer, made up the board of directors of Producers Life.

6. As of April 27, 1964, Producers Life had approximately 14,000 stockholders and 880,000 shares of common

stock issued and outstanding, including 50,208 treasury shares.

7. Prior to and on April 27, 1964, the selling directors owned in the aggregate 27,416 shares of the common stock of Producers Life. In addition, the selling directors controlled 88,904 shares of such stock which were held in the name of Producers Thrift & Loan Company ("Producers Thrift"), all of whose stock was owned by the selling directors and one other person.

8. Prior to and on April 27, 1964, the selling directors other than Bilbrey held voting proxies representing approximately 565,000 out of approximately 880,000 shares of the outstanding common stock of Producers Life.

III

1. Since March 15, 1964, the defendants, in concert with the selling directors, have made use of means and instrumentalities of interstate commerce and of the mails to engage in manipulative and deceptive devices and contrivances, in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j, and Rule 17 CFR 240.10b-5, in connection with the purchase and sale of securities issued and to be issued by Producers Life and National Life, a) by employing a device, scheme and artifice to defraud; b) by making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and c) by engaging in acts, practices and a course of business which operate and would operate as a fraud and deceit upon the defendant Producers Life and its stockholders, as more fully set forth below.

2. Since March 15, 1964, in derogation of the rights and interests of the stockholders of Producers Life, and in contravention of the fiduciary obligations of the selling directors to Producers Life and its stockholders, and contrary to the fiduciary obligations of the defendants Wallace, Saffert, Wilkins, Barrett, and Large, sometimes hereinafter referred to as "successor directors," to Producers Life and its stockholders, the defendants with the objective of transferring control of and dominion over the

assets, business (including insurance in force) and other resources of Producers Life to National Life and National Securities, and with the ultimate objective of accomplishing a merger, consolidation or amalgamation of Producers Life and National Life (with the surviving corporation to be subject to the dominion and control of the defendant National Securities and its nominees), have conducted negotiations and effected arrangements including the following:

- (a) the sale and transfer of the stock of Producers Life owned by the selling directors, by Producers Thrift and by Producers Life ("treasury stock") to National Life or National Securities;
- (b) the sale, surrender and transfer by the selling directors to National Life or National Securities and their designees of their directorships and offices in Producers Life, together with the voting proxies of ordinary stockholders held by them;
- (c) the acquisition by the selling director Reedy and his nominees from Producers Life of 111,088 shares of the Class A stock and 1,469 shares of the Class B stock of Dependable Life Insurance Company ("Dependable") owned by Producers Life;
- (d) the acquisition by Producers Thrift of 40,000 shares of its preferred stock, \$100,479 of its promissory notes and assigned collateral and 25,248 shares of the stock of Producers Finance Company of Arizona owned by Producers Life;
- (e) the execution of agreements under which the selling directors are to receive \$979,000 from National Securities for their agreements not to compete in the insurance business and the assumption by National Securities of pre-existing obligations of Producers Life to certain other persons under similar agreements; and
- (f) the consolidation of all of the business operations of Producers Life into those of National Life;

and the defendants, acting in concert with the selling directors, have accomplished the following additional elements of their scheme and plan:

- (g) the merger and consolidation of Producers Life and National Life by means of purchases and sales of securities through an agreement of consolidation and plan of reorganization;
- (h) the acquisition of complete dominion over and control by National Life and National Securities, their officers, directors and nominees, of all assets, business and affairs of Producers Life.

3. On or about April 27, 1964, the individual defendants and the selling directors in their respective capacities as directors of National Securities, of Producers Life, of Dependable Life and of Producers Thrift met in Phoenix, Arizona, to authorize the corporate actions necessary to put the foregoing plan and scheme into operation.

4. On or about April 27, 1964, pursuant to actions taken by their directors, the defendants National Life, National Securities, Producers Life and Producers Thrift and the selling directors entered into and performed an escrow agreement which, by means of the documents, moneys and securities passing through said escrow, accomplished the purposes of Items (a), (b), (c), (d) and (e) of paragraph 2 hereof.

5. The selling directors, in furtherance of the plan and scheme, caused Producers Life to transfer to National Securities through said escrow 50,203 shares of the treasury stock of Producers Life for a stated consideration of \$114,964.87 in cash or securities (equivalent to \$2.29 per share, the then book value of said stock) at a time when the market price for said stock on the over-the-counter market was approximately 7½ bid, 8 asked and National Securities purported to assume certain obligations of Producers Life and Dependable in favor of persons named Pound, Lovelace, Heeder and Davis in the amount of \$627,891.28 as an additional consideration for the purchase of the 50,203 shares of Producers Life as described above. It was intended by the defendants, however, that National Securities and National Life, after assuming dominion over and control of Producers Life, would by some means cause Producers Life, or the surviving corporation resulting from the contemplated merger or con-

solidation of Producers Life and National Life, to reimburse National Securities for moneys paid out pursuant to its assumption of such obligations.

6. On or about April 27, 1964, as an incident of the escrow described in paragraph 4 hereof, and in furtherance of defendants' plan and scheme, National Securities and the selling directors executed and exchanged agreements by which the selling directors and Dependable agreed (with some limitations) not to compete in the insurance business with Producers Life and National Life or any entity emerging from the contemplated merger or consolidation of those corporate defendants, and National Securities agreed to compensate the selling directors in an aggregate amount of \$979,000 payable in 120 monthly installments following April 30, 1964. As an element of said scheme and plan, it was intended by the defendants that National Securities and National Life, after assuming dominion over and control of Producers Life, would cause Producers Life, or the corporation surviving from said merger or consolidation, to reimburse National Securities for moneys paid out pursuant to said "non-compete" agreements.

7. On or about April 27, 1964, in furtherance of said scheme and plan, the selling directors received approximately \$570,000 from National Securities through said escrow as consideration for their 27,416 shares of the stock of Producers Life, which sum is equivalent to \$20.79 per share.

8. On or about April 27, 1964, in furtherance of said scheme and plan, the selling directors caused Producers Thrift, which they owned and controlled, to sell through said escrow to National Securities 38,894 shares of the stock of Producers Life for an aggregate consideration of \$372,769.41, or approximately \$9.00 per share.

9. On or about April 27, 1964, in furtherance of said scheme and plan, at a meeting of the directors of Producers Life, the selling directors resigned their positions as officers and directors of Producers Life, one by one, and caused the remaining directors to elect, in their stead as directors, nominees of National Securities and National Life, namely, the defendants Saffert, Barrett, Setter and

Large, who thereupon assumed management and control of the assets, business and affairs of Producers Life.

10. On or about April 27, 1964, in furtherance of said plan and scheme, the defendants Saffert, Barrett, Setter and Large, then constituting a majority of the board of directors of Producers Life (called the "new board"), forthwith caused the election of defendant Saffert as president and of defendant Large as secretary of said corporation.

11. On or about April 27, 1964, in order to cement the dominion and control over Producers Life by National Securities and National Life, and their agents and nominees, and in furtherance of said scheme and plan, the selling directors other than Bilbrey transferred through said escrow to the defendant Wallace voting proxies representing in excess of 60 per cent of the then outstanding stock of Producers Life, together with documents of assignment and substitution.

12. The selling directors, in carrying out and executing the transactions described above, and thereby enriching themselves, were acting in concert with the defendants and in contravention of their fiduciary obligations to the stockholders of Producers Life as a group, and such selling directors knew or should have known that the defendants were engaged in accomplishing a device and scheme to effect a merger or consolidation of Producers Life and National Life for the benefit and advantage of National Securities or to accomplish some other similar arrangement for the benefit and advantage of National Securities.

13. On or about April 27, 1964, as a further incident of said scheme and plan, the new board of directors of Producers Life forthwith caused its officers Saffert and Large to execute a "Management Agreement" between Producers Life and National Securities under which National Securities assumed full and complete management of the business and affairs of Producers Life.

14. Shortly after April 27, 1964, all of the books, records and business operations of Producers Life were removed to the premises of National Life and blended into the operations of National Life, the offices of Producers

Life were closed and its affairs since have been conducted in the offices of National Life.

15. In May, 1964, the 116,603 shares of Producers Life acquired by National Securities through the escrow referred to in paragraph 4 hereof, and certain additional shares, were transferred to National Life, for a consideration represented to be \$1,114,964.87.

16. The remaining minority directors of Producers Life resigned as follows: Messrs. Falconer and Hunter in May, 1964, and Mr. Iverson in June, 1964. In furtherance of said scheme and plan the board of directors of Producers Life appointed as directors to fill vacancies the following: on June 5, 1964, Ted E. Wilkins; on October 15, 1964, Robert Sampley; on November 27, 1964, Robert M. Wallace (president and a director of National Securities; president and a director of National Life) and Ronald G. Larson (a director of National Life). Joseph C. Shorroock (a vice-president and a director of National Life and of National Securities) was elected a director at a stockholders' meeting held December 31, 1964 through the vote of 135,038 shares of the stock of Producers Life held by National Life and through the voting of additional shares represented by proxies held and voted by Wallace and Saffert. The defendants who have knowledge of the number of shares represented and voted at said meeting by proxies obtained by defendant Wallace from the selling directors on April 27, 1964, as alleged in paragraph 11, and of the number of shares then represented and voted by means of proxies obtained by means of the proxy solicitations described in paragraphs 18 through 26, have refused to reveal this information.

17. On May 28, 1964, the board of directors of Producers Life elected defendant Bohannon (executive vice-president and a director of National Securities and treasurer and a director of National Life) as assistant secretary with specific powers respecting transactions in the stocks, bonds and other securities in its portfolio.

18. The directors of Producers Life who were selected as described in paragraphs 9 and 16 at all times since their selection have served, and continue to serve, as directors of Producers Life and have used their positions

and offices to facilitate and accomplish the device, scheme and artifice to defraud and the acts, practices and course of business as alleged herein. Whenever the term "National Group" is used below it signifies the defendants National Securities, National Life and the individual defendants Wallace, Bohannon, Saffert, Wilkins, Barrott, Setter and Large.

19. Commencing in August, 1964, and continuing thereafter through March, 1965, the National Group through its designee directors of Producers Life and officers and employees selected by them, in furtherance of said scheme and plan, conducted an intensive campaign through communications sent by means of the mails to the 14,000 public stockholders of Producers Life throughout the United States. These communications were drafted and designed to convince the stockholders of the business abilities of the National Group, to belittle and discredit any stockholders opposed to their plans and actions, and to solicit the execution of proxies which would authorize the defendants Wallace and Saffert, with full powers of substitution, to vote shares of such stockholders at any meetings of the stockholders. These communications contained misrepresentations of material facts and omitted to state material facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, including the communications, statements and omissions described in paragraphs 21 through 34 below.

20. On or about November 27, 1964, in furtherance of said scheme and plan, the defendants National Life and Producers Life entered into an agreement to consolidate and reorganize. This agreement was authorized on behalf of Producers Life by its board of directors, all of whom were nominees of National Securities. The agreement provides, *inter alia*, for the merger of National Life into Producers, the termination of the management agreement (described in paragraph 13 hereof), a reorganization of Producers Life and the issuance of shares of Producers Life in exchange for outstanding shares of National Life, the change of the name of Producers Life to National

Producers Life Insurance Company ("National Producers"), and an undertaking by Producers Life and National Life that National Producers will reimburse National Securities for all sums expended by National Securities on account of its obligations (a) pursuant to the "non-compete" agreements executed in favor of the selling directors other than Bilbrey as described in paragraph 7 hereof, and (b) pursuant to its assumption of the obligations of Producers Life under the "non-compete" agreements in favor of Messrs. Pound, Lovelace, Heeder and Davis as described in paragraph 6 hereof. In addition, the agreement to consolidate and reorganize provides for its submission to the stockholders of Producers Life and National Life for their approval. A true and complete copy of said agreement to consolidate and reorganize is included in Exhibit 9(2)¹ hereto attached and incorporated herein by reference.

21. On or about November 27, 1964, in furtherance of said scheme and plan, the National Group caused to be mailed to the stockholders of Producers Life throughout the United States copies of the consolidation agreement dated November 27, 1964, together with copies of the notice of special meeting of stockholders to be held on December 31, 1964, and other material soliciting proxies to the defendants Saffert and Wallace to be voted in favor of the consolidation agreement. The said proxy solicitation material consisted of a Notice of Special Meeting of Stockholders to be held on December 31, 1964, and a copy of the consolidation agreement, true copies of which are attached hereto as Exhibit 9(1) and 9(2), respectively, a letter to stockholders dated November 27, 1964 over the signature of A. W. Saffert and a form of proxy, true copies of which are hereto attached as Exhibit 10(1) and 10(2), respectively.

22. The consolidation agreement Exhibit 9(2) provides in paragraph 24 that Producers Life (to be renamed National Producers Life Insurance Company), as the surviv-

¹ The Exhibits appended hereto are numbered to conform with the same Exhibits which are attached to the affidavit of W. S. Tucker heretofore filed in this action.

ing corporation upon consummation of the agreement, is to reimburse National Securities (and charge to expense) any sums paid by National Securities on account of the "non-compete" agreements of April 27, 1964, with the selling directors, but nowhere in such proxy solicitation material or otherwise has the National Group disclosed to stockholders of Producers Life that the sums so to be paid to National Securities amount to about \$97,900 per year for more than nine years and total in excess of \$983,000.

23. The consolidation agreement provides in paragraph 24 that the surviving corporation will reimburse National Securities for (and charge to expense) any sums paid out by National Securities by reason of its assumption on April 27, 1964, of the obligations of Producers Life to Messrs. Pound, Lovelace, Heeder and Davis for their agreements not to compete in the insurance business, but the National Group has failed to disclose to stockholders of Producers Life in such proxy solicitation material or otherwise (1) that the amount so to be paid is approximately \$511,695; and (2) that the effect of the provision of the consolidation agreement would be to relieve National Securities from, and transfer to the survivor of the proposed consolidation of Producers Life and National Life, the obligations to Messrs. Pound, Lovelace, Heeder and Davis which National Securities had assumed and for which it received a credit of \$627,891.76 on the stated purchase price of \$742,850.63 which it paid on April 27, 1964, for the 50,203 shares of stock of Producers Life bought from Producers Life as described in paragraphs 5 and 6 of Part III hereof.

24. The Notice of Special Meeting of Stockholders, Exhibit 9(1), mailed as alleged in paragraph 19 hereof provides that at the special meeting convened for December 31, 1964, there would be a vote of stockholders upon:

"4. The approval of a resolution adopted by the Board of Directors amending the Bylaws by increasing its size to nine members and providing in part that the terms of Directors shall be three years with the terms of three Directors expiring each year."

As part of said scheme and plan, the National Group failed to disclose in the proxy solicitation material (Exhibits 9 and 10) or elsewhere that (1) it was the intention of the National Group to cause the adoption of a resolution which not only contained the foregoing provisions but also would amend the by-laws so that, with respect to the removal of directors, a two-thirds majority vote by all stockholders entitled to vote on such removal would be required in order to remove the board as a whole and no director could be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors; (2) including the proxies acquired from the selling directors, the National Group then had sufficient proxies to pass the resolution described in clause (1); (3) National Securities then owned and controlled sufficient voting shares to effectively block the removal of any director under the terms of the amended by-law; (4) the true purpose of the resolution as a whole was to make absolute the control and domination of Producers Life (also National Producers Life) by National Securities through its nominees acting as directors and officers thereof, and to prevent any effective interference with such domination and control by or on behalf of any of the public stockholders of Producers Life (also National Producers Life).

25. Nowhere in the communications (Exhibits 9 and 10) or elsewhere did the National Group disclose to stockholders of Producers Life that (1) under Arizona law stockholders who voted to reject the consolidation agreement, and who did not consent to the agreed manner of converting the shares of stock, had the right to be paid in cash the fair value of their stock provided that they gave written notice of dissent to Producers Life not later than two days after the meeting to vote upon the consolidation agreement; or that (2) in order to secure dissenters' rights under the laws of Arizona it was necessary that a stockholder affirmatively vote against the proposed merger or consolidation of National Life and Producers Life.

26. The form of proxy provided by the National Group for the use of stockholders, Exhibit 10(2), purports to appoint A. W. Saffert and R. H. Wallace, or either of them, with power of substitution, as proxies to vote the solicited stockholders' shares in Producers Life or National Producers:

"1. At the special meeting of stockholders or adjournments or recesses thereof held for the approval of a Consolidation Agreement between Producers Life Insurance Company and National Life & Casualty Company providing for the merger of National into Producers which would be thenceforth known as 'National Producers Life Insurance Company'"; and

"2. At any other meeting of the stockholders of Producers or National Producers, and at all adjournments or recesses thereof."

The communications to stockholders did not disclose the rights of dissenters under Arizona law, and the form of proxy (1) afforded no means whereby the stockholders who were so solicited could vote against the proposed merger or consolidation and thereby secure their rights as dissenters in accordance with Arizona law; and (2) afforded the stockholders so solicited no means whereby they could vote separately on any of the several matters presented for action at the proposed special meeting of stockholders.

27. In furtherance of said scheme and plan, the balance sheet of National Life included in the solicitation material (Exhibit 10(1)) includes 130,506 shares of the stock of Producers Life shown as an asset in the sum of \$1,174,556, equivalent to \$9 per share. The consolidation agreement (Exhibit 9(2)) provides in paragraph 8 that—

"On the final effective date, but nevertheless for all purposes whatsoever as of December 31, 1964, regardless of the actual date, Producers, the surviving corporation, shall become the owner of all of the assets and assume all liabilities of National Life, including policy liabilities, all as of December 31, 1964, and National Life shall cease to exist as a corporate entity."

Exhibit 10(1) also contains a *pro forma* balance sheet of National Producers Life, giving effect to the consolidation, as of June 30, 1964. The *pro forma* balance sheet includes treasury stock in the amount of \$1,174,556, as an investment asset, reflecting the conversion of the shares of Producers Life held by National Life at June 30, 1964, into shares of National Producers Life. Nowhere in these balance sheets (Exhibit 10(1)) or elsewhere has the National Group disclosed to stockholders of Producers Life that the market value of the stock of Producers Life on and about June 30, 1964, was less than \$6.75 per share or that on and about November 27, 1964, said market value was less than \$6.75 per share. The inclusion of treasury stock as an investment asset at a valuation of \$1,174,556 or any other sum in said *pro forma* balance sheet was *per se* misleading in that such treasury stock constituted a fictitious and illusory asset, and was no different from authorized but unissued stock except that it could be sold for less than par (in this case fifty cents per share).

28. As part of said scheme and plan the National Group caused to be included within the solicitation material (Exhibits 9 and 10) and also those alleged below in paragraphs 31 and 32 positive forecasts that the net income before taxes for the reorganized National Producers Life for the calendar year 1965 would be \$460,000. These representations are *per se* misleading in that there can be no assurance that such net income or any part thereof will be realized.

29. The meeting noticed as provided in Exhibit 9(1) was convened on December 31, 1964. Action was then taken to elect Joseph C. Shorrock as a director as alleged in paragraph 16 above and to adopt the amendment to the by-laws referred to in paragraph 24. The meeting was then recessed *sine die* without a vote on the proposed merger or consolidation.

30. In furtherance of said scheme and plan the National Group acting through defendants Saffert and Large arranged for the recessed meeting referred to in paragraph 26 to be reconvened on March 26, 1965, at Phoenix,

Arizona. The meeting was further recessed on March 26, 1965, and eventually was held on or about April 19, 1965, or April 26, 1965, or on both such days.

31. On or about March 2, 1965, in furtherance of said scheme and plan, the defendants caused to be mailed to stockholders of Producers Life a communication (over the signature of the defendant Saffert) soliciting proxies to be voted in favor of the proposed consolidation agreement and plan of reorganization with which was enclosed a copy of an investment advisory letter entitled "North's News Letter and Special Report" dated February 9, 1964. The "Special Report" although purporting to be an analysis by an independent investment advisory service of the financial affairs of National Securities and its subsidiaries, including National Life and Producers Life, and of the effect of the proposed merger and consolidation, in fact represented nothing more than an assemblage of statistics, projections, formulas and conclusions which were provided by the management of National Securities and were based on the information contained in Exhibits 9 and 10. The "Special Report" did not, in any true sense, represent an independent analysis of National Securities by the advisory service.

32. On March 13, 1965, the defendants caused a notice of the reconvening on March 26, 1965, of the recessed stockholders' meeting to be mailed (over the signature of the defendant Large) to stockholders of Producers Life, together with a communication (over the signature of the defendant Saffert) soliciting proxies in favor of the existing management to be voted in favor of the consolidation agreement and plan of reorganization described in paragraph 20 hereof.

33. In furtherance of said scheme and plan, none of the communications mailed to stockholders of Producers Life as described herein disclosed the following material facts necessary in order to make the statements made therein not misleading:

- (a) during the fiscal year ended December 31, 1964, a net operating loss of \$35,657 had been sustained by National Life and a net operating loss of \$69,716 had been sustained by Producers Life;

- (b) shares of capital stock of Producers Life acquired by National Life at a stated cost in excess of \$1,184,000 had been written down on the books of National Life to \$641,658, the approximate market value of said stock as of December 31, 1964, with a resulting reduction of the surplus account of National Life in the sum of \$579,881.16;
- (c) market value of shares of Producers Life was less than \$6.75 on or about December 31, 1964, less than \$7.08 on or about March 2, 1965, and less than \$7.88 on or about March 18, 1965.

34. On or about May 8, 1965, the National Group caused to be sent by mail to stockholders of Producers Life throughout the United States a communication on the letterhead of Producers Life over the signature of A. W. Saffert, which contained the following statements:

"The merger of National Life and Casualty Insurance Company into Producers Life Insurance Company has been approved by stockholders of both companies, and is now ready for submission to the Arizona Director of Insurance for final approval. His decision is expected soon.

"Stockholders of Producers Life cast 661,497 votes in favor of the merger at the April 16 recessed meeting. This was 75% of the outstanding shares and represented an overwhelming approval of this issue which had been debated for several months. This action was later confirmed at the regularly scheduled meeting of April 26 by the affirmative vote of 692,212 shares, which is 78% of the total outstanding.

"By the same vote, stockholders approved a resolution calling for a 6-for-5 stock split. Upon approval of the merger by the Arizona Director of Insurance this will mean you will have six shares of stock in the merged company for every five shares you now own in Producers Life."

"The way was cleared for the merger vote by two court decisions. First, the Superior Court granted our motion to set aside a previous order which prevented a vote by Producers Life stockholders. Then, the Federal District Court granted our motion to vacate an order previously obtained by the SEC which had barred voting on the merger proposal."

This communication did not disclose that the Court, in vacating the order previously entered which barred the voting of proxies obtained by the defendants Wallace and Saffert, also entered an order restraining the defendants from engaging in any manipulative or deceptive device or contrivance, in violation of Section 10(b) of the Act, 15 U.S.C. § 78j(b), and Rule 17 CFR 240.10b-5, "in connection with the purchase or sale of securities issued or to be issued by Producers Life in derogation of the rights and interests of the stockholders of Producers Life and in contravention of the fiduciary obligations of the defendants or any of them to Producers Life and its stockholders . . .," and that the merits of the allegations made by the Commission remained for determination by the Court after trial.

35. Slightly over 15% of the 75% (and 78%) of the outstanding shares of stock referred to in the communication quoted above was accounted for by more than 135,000 shares owned by National Securities, of which 13.3% was acquired from and through the selling directors as alleged in paragraphs 5 through 8 hereof. The balance of the shares voted (slightly under 60% (and 63%)) was accounted for by proxies given to and voted by the defendants Wallace and Saffert (or their substitutes) which had been obtained by means of the acts of fraud and deceit alleged in paragraphs 21 through 33 hereof.

36. The Consolidation Agreement of November 27, 1964, is void and ineffective because (1) it represents an essential element of an unlawful scheme and device to defraud, and (2) it has never been given valid approval by the holders of the requisite two-thirds majority of the outstanding stock of Producers Life.

37. The Consolidation Agreement of November 27, 1964, and the provision for a one-for-five stock dividend

to stockholders of Producers Life were submitted to the Director of Insurance of the State of Arizona on May 7, 1965, for his approval. On July 9, 1965, the Director announced his approval of the stock dividend and of the agreement, and the defendants then announced that they had accomplished all formal acts required to consummate the consolidation agreement.

38. The National Group is proceeding to combine and intermingle the business, insurance, records, assets, liabilities and all affairs of National Life and Producers Life into a single integrated operation, and is ceasing to maintain the separate corporate and business identities of the two corporations.

The defendants, unless restrained and enjoined, will continue to engage in the acts and practices specified above.

WHEREFORE, the Securities and Exchange Commission demands:

1. That the Court determine and adjudicate that the occurrences described in Section III above constituted a device, scheme and artifice to defraud and a series of acts, practices and a course of business, in connection with the purchase and sale of securities, which were accomplished by the defendants in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 17 CFR 240.10b-5.

2. That a preliminary injunction and a permanent injunction be entered restraining and enjoining the defendants and each of them, their officers, agents, employees, attorneys, successors and assigns, and all persons acting in concert or participation with them, from, directly or indirectly, making use of any means or instrumentality of interstate commerce or of the mails to engage in any manipulative or deceptive device or contrivance, in violation of Section 10(b) of the Act, 15 U.S.C. § 78j(b), and

Rule 17 CFR 240.10b-5, in connection with the purchase or sale of any securities, a) by making any untrue statement of material fact or omitting to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or b) by engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, whether through--

- (1) the device of a plan of reorganization, consolidation, merger, management contract or otherwise; or
- (2) the solicitation of voting proxies or votes of stockholders to be used to accomplish any such plan of reorganization, consolidation or merger;

or engaging in any act, practice or course of business of similar object or purport.

3. That the Court enter a decree requiring and compelling the defendants and each of them to take all actions and measures which are necessary to rectify and correct the consequences of the wrongful and unlawful conduct of defendants as specified above and to restore Producers Life, National Life, their stockholders and the defendants to the status and economic condition which they occupied prior to April 27, 1964.

4. That the Court enter a decree requiring and compelling the defendants and each of them to make an accounting of the extent to which their actions and the actions of the selling directors in violation of Section 10(b) of the Act, 15 U.S.C. § 78j(b), and Rule 17 CFR 240.10b-5, and in derogation of the rights and interests of the stockholders of Producers Life, have resulted in damage to such stockholders, and the extent to which the defendants have been unjustly enriched at the expense of such stockholders; and that, by suitable decree of the Court, the respective equities of the defendants and the stockholders of Producers Life be arranged and adjusted on a fair and equitable basis, including, if warranted on the basis of the accountings made by the defendants, the subordination of the stock interests and other equities of National Securities in National Producers to the interests

of those stockholders whose equities have been diminished by reason of the unlawful and wrongful conduct of the defendants.

5. That the Commission may have all further relief that the Court may deem just, equitable, and necessary in the circumstances.

/s/ Arthur E. Pennekamp
ARTHUR E. PENNEKAMP
Regional Administrator

/s/ W. Stevens Tucker
W. STEVENS TUCKER
Assistant Regional Administrator

/s/ F. E. Kennamer, Jr.
F. E. KENNAMER, JR.
Assistant General Counsel

/s/ James G. Newby
JAMES G. NEWBY
Attorney

Securities and Exchange Commission

[Filed September 1, 1965]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. Civ. 5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., ET AL., DEFENDANTS

ANSWER OF DEFENDANTS TO AMENDED
AND SUPPLEMENTAL COMPLAINT

For its answer to the complaint in this cause, the defendants answer as follows:

1. This Court has no jurisdiction of this matter, the matter complained of not being within any jurisdiction given to the Court under the Securities Act of 1934.

2. This Court farther has no jurisdiction because the matters complained of are entirely within state jurisdiction, as provided by the McCarran Act, 15 U.S.C. Sec. 1012(b).

3. There is an absence of indispensable parties.

4. The complaint fails to state a claim for relief.

In addition, the defendants for further answer, following the written numbers of the complaint herein, answer as follows:

I

1. The allegations of paragraph 1 are denied.
2. The allegations of paragraph 2 are denied.
3. The allegations of paragraph 3 are denied.

II

1. The allegations of paragraph 1 are denied, the defendant National Life having merged into another company now known as National Producers Life Insurance Company.

2. The allegations of paragraph 2 are denied.

3. The allegations of paragraph 3 are denied as to National Life, that company having been merged as is set forth in paragraph 1 hereof. The allegations as to direction and control are denied. The allegations as to the employment of Wilkins are denied.

4. The allegations of paragraph 4 are admitted.

5. The allegations of paragraph 5 as to the composition of the Board of Producers are admitted and the defendants, not having sufficient information to form a belief, deny the allegations as to control and management.

6. The allegations as to paragraph 6 are admitted.

7. The allegations of paragraph 7 are admitted insofar as the number of shares owned by the named persons. As to the "control" of the shares of Producers Thrift, this relates to the internal management of this corporation and these defendants have not sufficient information or belief to plead thereto. However, it is believed that the number of shares to which the plaintiff meant to make reference was 38,984 instead of 38,904 as pleaded.

8. The allegations of paragraph 8 are admitted.

III

1. The allegations of paragraph 1 are denied in each and every particular.

2. The allegations of paragraph 2 are so multifarious that defendants are compelled to plead in respect to lines or parts thereof. The portions in lines 1-13 are denied, and otherwise the defendants respond as follows:

(a) The defendants admit that the stock identified in paragraph 2(a) was sold to these purchasers and otherwise deny the allegations of the paragraph.

(b) The allegations of this subparagraph are denied.

(c) The allegations of this subparagraph are admitted insofar as it alleges that the person or persons referred to purchased the stock in question.

(d) The allegations of this subparagraph are admitted insofar as it is descriptive of the transaction.

(e) The allegations of this subparagraph are admitted insofar as it is descriptive of the transaction.

(f) The allegations of this subparagraph are denied as to the period prior to the merger; and by the merger, National Life was "merged" into Producers Life.

(g) Defendants admit that Producers Life and National Life have been merged.

(h) The allegations of this subparagraph are denied.

3. The allegations of this paragraph are denied.

4. Defendants admit that on April 27, 1964, a transaction was entered into but deny that this was for or accomplished the purposes attributed thereto.

5. The allegations of paragraph 5 are denied, apart from all other inaccuracies National Securities having in fact paid \$127,559.70 without reimbursement from anyone on the obligations alluded to in this paragraph in the year 1964.

6. The allegations of paragraph 6 are denied.

7. The allegations of paragraph 7 are denied, the fact being that National Securities agreed to pay \$942,769.41 for 66,400 shares, or an average of \$14.20 a share. No part of the agreement governed how this sum should be allocated among the sellers and this was in fact of no concern to these defendants.

8. The allegations of paragraph 8 are denied, the fact being that National Securities agreed to pay \$942,769.41 for 66,400 shares, or an average of \$14.20 a share. No part of the agreement governed how this sum should be allocated among the sellers and this was in fact of no concern to these defendants.

9. It is admitted that the named persons did resign and that the other named persons were elected to the positions of directors and the allegations are otherwise denied.

10. It is admitted that Messrs. Saffert and Large were elected to the offices named and the allegations of paragraph 10 are otherwise denied.

11. The allegations of paragraph 11 are denied except that proxies were in fact substituted.

12. The allegations of paragraph 12 are denied.

13. The allegations of paragraph 13 are denied except that a management agreement was entered into.

14. Defendants admit that the books and records were moved to a building in which National Life and several

other concerns have offices, and in which offices have been maintained for Producers; and the allegations are otherwise denied.

15. The allegations of paragraph 15 are admitted.

16. In regard to the allegations in paragraph 16, the defendants allege as follows:

The resignation of J. Grant Iverson was accepted by the Board of Directors of Producers Life on June 5, 1964; the resignations of John J. Falconer and Jess Hunter were accepted by that Board on May 28, 1964; the defendant Ted Wilkins was appointed to the Board of Directors on June 5, 1964; defendant Robert H. Wallace and Ron Larson were elected to the Board of Directors on November 27, 1964; Mr. Robert Sampley was appointed to the Board of Directors on October 15, 1964. The allegations of paragraph 16 in conflict with the allegations herein are denied.

17. The allegations of paragraph 17 are admitted.

18. The allegations of paragraph 18 are denied.

19. The defendants admit that from the period of approximately August 1964 to approximately March 1965, there was a vigorous shareholders fight within Producers and that those favorable to and those opposed to management did wage an intensive campaign among the stockholders. Proxies were solicited on all sides and this included solicitation of proxies to be given to the defendants Wallace and Saffert. Defendants deny that any such communications issued by them contained any misrepresentations of material facts or omissions of matters necessary to be stated in order to avoid misleading and instead allege, that, considering the tempestuous nature of the battle under way, the various statements issued by these defendants or persons in concert with them were singularly trustworthy.

20. The defendants admit that a general plan to consolidate and reorganize by a statutory merger was entered into by National and Producers. As to the various terms of these compendious agreements, defendants decline to admit or deny, the documents being the best evidence of their terms. They admit that the agreement provided for submission to the stockholders of the two companies and otherwise deny the allegations of the complaint.

21. Defendants admit that the various mailings attributed to them were made and deny the remainder of the allegations of this paragraph.

22. Defendants neither admit nor deny the allegations of this paragraph, the allegations being simply a purported summary of the terms of an exhibit attached to the amended complaint. The allegations as a summary are partial only, the Commission omitting to state material facts necessary to be stated in order to make its own statements made, in the light of the circumstances under which they were made, not misleading, in that the Commission fails expressly to note the various contingencies and reservations as to the commitment here baldly alleged. The dollar figure is correct.

23. Defendants make the same answer to this paragraph as to paragraph 22.

24. The allegations of paragraph 24 are admitted insofar as they purport to quote the notice of special meeting of stockholders and the paragraph is otherwise denied.

25. The allegations of paragraph 25 are denied, the defendants having expressly referred to the applicable statutes. If the substance of the allegation is that the defendants did not attempt to interpret the various applicable Arizona merger statutes, the allegation is admitted and defendants further allege that this is both the general and the better practice.

26. Defendants admit that it solicited general proxies and allege further that the solicitations were made in the context of the general proxy fight in which two other groups were seeking negative votes.

27. The allegations of paragraph 27 are denied and it is affirmatively alleged that the figure used was substantially similar to that authorized expressly by the Insurance Commissioner of Arizona in writing for this general purpose. The inclusion of Treasury stock as an investment asset was not per se misleading and was here permissible under generally accepted accounting practices.

28. The allegations of this paragraph insofar as they allege misleading statements are denied.

29. The allegations of paragraph 29 are admitted, the defendants affirmatively alleging that the filing of an ad-

ditional lawsuit shortly before the December 31 meeting made it appear unwise to vote on the merger matter at that time without obtaining advice of counsel.

30. The defendants admit the series of meetings referred to in paragraph 30 and otherwise deny the allegations of this paragraph.

31. The defendants admit that a document such as that identified in paragraph 31 was distributed and otherwise deny the allegations. The report on its face made completely clear that the underlying information was obtained from these defendants, expressly stating that the "information contained in this report was obtained primarily from the company and sources close to the company and has not been otherwise verified although believed to be authentic." The statement as published contained a second express black-bordered announcement by Producers putting the proper limitations upon any assurances made as to the North Report.

32. The allegations of paragraph 31 are admitted.

33. Defendants deny that any of the matters referred to needed to be disclosed in order to avoid having the statements in question materially misleading. They affirmatively allege that all treatments of the problem of value for purposes of the merger were on the basis of book rather than market.

34. For answer to this paragraph, the defendants allege that the materials circulated over the signature of Mr. Saffert was in all respects true and correct. The allegations by the plaintiff herein are themselves seriously misleading in that they fail to advise this Court that the Court previously had vacated after argument all portions of a previously obtained ex parte restraining order which precluded the merger.

35. The defendants deny the allegations of this paragraph and allege that well over 60% of the stockholders' votes cast in favor of the merger agreement on the part of Producers' shareholders were by shareholders unconnected with these defendants.

36. The allegations of paragraph 36 are denied.

37. The allegations of paragraph 37 are admitted with the further allegation that this paragraph as set forth by

the plaintiff contains misrepresentation of material facts in that it omits to state material facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, including specifically the fact that the plaintiff fails to allege that the plaintiff laid before the Insurance Director of Arizona the very papers and matters on the basis of which it was simultaneously seeking an injunction in this Court.

38. The defendants admit that the two companies have been merged and otherwise deny the allegations of the paragraph.

WHEREFORE, the defendants pray that the plaintiff take nothing by its complaint, and that this action be dismissed and that judgment be given for the defendants herein, and for such other relief as may be just and proper.

LEWIS ROCA SCOVILLE BEAUCHAMP
& LINTON

By /s/ John P. Frank
JOHN P. FRANK

/s/ Jeremy E. Butler
JEREMY E. BUTLER
Attorneys for defendants
9th Floor, Title & Trust Building
Phoenix, Arizona

STATE OF ARIZONA)

) SS.

COUNTY OF MARICOPA)

ROBERT H. WALLACE, being first duly sworn on oath, deposes and says: That he is President of NATIONAL SECURITIES INC., a corporation, and Chairman of the Board of Directors of PRODUCERS LIFE INSURANCE COMPANY, a corporation, defendants herein, and that he makes this affidavit for and on behalf of said NATIONAL SECURITIES, INC. and PRODUCERS LIFE INSURANCE COMPANY, being duly authorized thereunto: That he has read the foregoing and knows the contents thereof, and that the matters and things therein set forth are true of affiant's own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

/s/ Robert H. Wallace
ROBERT H. WALLACE

Subscribed and sworn to before me this 1st day of September 1965.

/s/ [Illegible]
Notary Public

My commission expires 9-29-68

[Filed September 1, 1965]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. Civ-5466-Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., ET AL., DEFENDANTS

MOTION FOR JUDGEMENT ON THE PLEADINGS
OR IN THE ALTERNATIVE FOR
SUMMARY JUDGMENT

The defendants herein move for judgment on the pleadings based upon the supplemental complaint and answer thereto; or in the alternative, for summary judgment based upon the record as made to this point and the affidavit of Wallace attached hereto.

1. The grounds which we believe warrant judgment for the defendants are apparent on the pleadings without reference to any other document. As we argue, the Court is either without jurisdiction or the complaint fails to state a cause of action.

2. Nonetheless, understanding is considerably enriched by the previous filings on both sides and the Court may care to take them into account. We therefore put the matter alternatively as a motion for summary judgment based on the record. This motion is supported by the original brief of the defendants as filed at the first hearing, and by a supplemental memorandum filed herewith.

Dated this 1st day of September, 1965.

Respectfully submitted,

LEWIS ROCA SCOVILLE BEAUCHAMP
& LINTON

By /s/ John P. Frank
JOHN P. FRANK

/s/ Jeremy E. Butler
JEREMY E. BUTLER
Attorneys for Defendants

[Filed September 1, 1965]

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

AFFIDAVIT OF ROBERT H. WALLACE

ROBERT H. WALLACE, being first duly sworn, upon his oath deposes and says that he is the President of National Producers Life Insurance Company and on May 4, 1964, was President of National Life and Casualty Insurance Company. In that capacity, he knows of his own knowledge that he did in fact present to the Arizona Director of Insurance, Mr. George Bushnell, the matter of how the stock of Producers should be carried on its books as an admitted asset, and the attached letter is a true and correct copy of the submission to Mr. Bushnell and of his approval of the figure used.

/s/ Robert H. Wallace
ROBERT H. WALLACE

Subscribed and sworn to before me this 1st day of September, 1965.

/s/ [Illegible]
Notary Public

My commission expires: September 29, 1968.

May 4, 1964

[2]

Mr. George A. Bushnell, Director
Department of Insurance
State of Arizona
Phoenix, Arizona

Dear Mr. Bushnell:

Request is hereby made on behalf of National Life and Casualty Insurance Company to invest \$1,114,964.87 of its funds in 125,979 shares of the common stock of Producers Life Insurance Company, an Arizona corporation, and to carry said investments on its books as an admitted asset of a value equal to the aforesaid cost.

If this may be done, please indicate your approval by signature at the foot of this letter.

Sincerely,

/s/ R. H. Wallace
R. H. WALLACE

Approved this 13th day of May, 1964

/s/ G. A. Bushnell
GEORGE A. BUSHNELL, Director

RHW:dhm

[Filed September 14, 1965]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. 5466 Phx

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., A CORPORATION, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, A CORPORATION, ROBERT H. WALLACE, ROBERT C. BOHANNON, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRETT, JOSEPH B. SETTER, BREEFERD W. LARGE, JR. AND PRODUCERS LIFE INSURANCE COMPANY, A CORPORATION (ALSO KNOWN AS NATIONAL PRODUCERS LIFE INSURANCE COMPANY), DEFENDANTS

MOTION OF SECURITIES AND EXCHANGE COMMISSION FOR PERMISSION TO AMEND COMPLAINT TO ADD PARTIES DEFENDANT

The Securities and Exchange Commission moves for an order permitting amendment of the Amended and Supplemental Complaint filed August 12, 1965 to add as defendants Richard G. Johnson, Ernest A. Richards, William A. Reedy, Bonnie B. Bilbrey and Producers Thrift & Loan Company, an Arizona corporation, by substituting revised pages 1, 2 and 3, in the form hereto attached, for the corresponding pages of the Amended and Supplemental Complaint on file.

[2] This motion is based on the files, records and proceedings herein, including the allegations contained in the Commission's Amended and Supplemental Complaint filed August 12, 1965 and in proposed amended pages 1, 2 and 3 hereto attached, and the attached affidavit of W. S. Tucker.

Respectfully submitted,

/s/ Arthur E. Pennekamp
ARTHUR E. PENNEKAMP
Regional Administrator

/s/ W. Stevens Tucker
W. STEVENS TUCKER
Assistant, Regional Administrator

/s/ F. E. Kennamer, Jr. WST
F. E. KENNAMER, JR.
Assistant General Counsel

/s/ James G. Newby
JAMES G. NEWBY
Attorney
Attorneys for
Securities and Exchange Commission

[Filed September 14, 1965]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. 5466 Phx

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., A CORPORATION, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, A CORPORATION, ROBERT H. WALLACE, ROBERT C. BOHANNON, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRITT, JOSEPH B. SETTER, BREEFERD W. LARGE, JR. AND PRODUCERS LIFE INSURANCE COMPANY, A CORPORATION (ALSO KNOWN AS NATIONAL PRODUCERS LIFE INSURANCE COMPANY), DEFENDANTS

MEMORANDUM ON PLAINTIFF'S MOTION TO
AMEND TO ADD PARTIES DEFENDANT

INTRODUCTORY

The Securities and Exchange Commission moves to amend its Amended and Supplemental Complaint filed August 12, 1965 to add as defendants Richard G. Johnson, Ernest A. Richards, William A. Reedy, Bonnie B. Bilbrey and Producers Thrift & Loan Company (additional defendants). The necessary changes would consist of:

- [2] (1) Adding their names to the caption on page 1.
(2) Changing the title on page 1 to read "Second Amended and Supplemental Complaint for Injunction".
(3) Adding their names as defendants in Part I, paragraph 1 at the top of page 2.
(4) Adding a reference to Producers Thrift & Loan Company as an Arizona corporation at the end of paragraph 4 at the foot of page 2.
(5) Deleting the words "in concert with the selling directors" from lines 21-23 on page 3.

These persons and their corporation were named as defendants in the original complaint and were dismissed by

order entered April 16, 1965 "without prejudice and without prejudice to plaintiffs to hereafter move to add the above named defendants as defendants herein."

These are the former directors, and their corporation, who sold stock and control of Producers Life to National Securities, Inc. about April 27, 1964 at a high premium-price and who realized added personal benefits of almost one million dollars in the form of non-compete agreements, in the transactions.

The original complaint, which was considered by the court at the hearing on April 16, 1965, did not demand any relief against these defendants other than the general remedy of injunction and the general demand for equitable relief.

Demand 1 of the Amended and Supplemental Complaint filed August 12, 1965 (the August 12 complaint) asks that the entire series of transactions and acts covering the period from March 15, 1964 to the filing of the Amended and Supplemental Complaint, [3] described in Part III thereof, be determined to constitute a device, scheme and artifice to defraud and acts, practices and a course of business in connection with the purchase and sale of securities, accomplished by the defendants in violation of Section 10 (b) of the Securities Exchange Act and Rule 17 CFR 240.10b-5. The complaint alleges that the additional defendants participated in these transactions and acts.

Demand 3 of the August 12 complaint asks for a restoration of the pre-April 27, 1964 status quo. If granted, this demand would require reversal of the transactions on and about April 27, 1964 by which the National group bought control of Producers Life from and with the assistance of the additional defendants. This relief would involve restoration of considerations received by the additional defendants in these transactions and other adjustments.

Demand 4 of the August 12 complaint asks for an accounting as to any damages to stockholders of Producers Life and unjust enrichment of defendants by reason of the acts of the presently named defendants and the additional defendants and an adjustment of the equities of the defendants and of stockholders of Producers Life on a fair and equitable basis. Inclusion of the additional defend-

ants as parties would enable the Court, in giving complete equitable relief, to shape its decree to charge them with any unjust enrichment they have received and with any damages they have caused and to adjust their interests as need be with those of the public stockholders of Producers Life.

Demand 5, the general demand for equitable relief, would enable the Court in its decree to make any other provisions or adjustments as to the additional defendants found to be necessary [4] or advisable in order to do complete equity.

THE APPLICABLE RULES

Rule 21 FRCP provides that "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just."

Rule 20 FRCP provides that "All persons may be joined in one action as defendants if there is asserted against them jointly, severally or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action".

Rule 15 FRCP permits amendment "by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

Counsel for defendants were requested to stipulate that, subject to the approval of the Court, these amendments could be submitted but they refused.

Respectfully submitted,

ARTHUR E. PENNEKAMP
W. STEVENS TUCKER
F. E. KENNAMER, JR.
JAMES G. NEWBY

By /s/ W. Stevens Tucker
W. STEVENS TUCKER
Counsel for the Securities and
Exchange Commission.

[Letters to Shareholders of
Producers Life Insurance Company]

[EXHIBIT 32]

PRODUCERS LIFE INSURANCE COMPANY
AN OLD LINE LEGAL RESERVE COMPANY
2300 N. CENTRAL • PHOENIX, ARIZONA • AL 8-5711 • P.O. BOX 1870

December 4, 1964

MERGER NEEDS YOUR SUPPORT

Dear Stockholder:

Upon approval of the proposed merger, your company will have nearly two hundred million of insurance in force, approximately twice the premium income and assets of the next largest Arizona life insurance company, ten percent of the total insurance in force of all 146 Arizona life insurance companies, and will rank in the top 20% of all life insurance companies in the United States.

Profits, before taxes of \$460,000 for 1965 have been projected by management in the pro forma statement contained in my letter to you of November 27, 1964. This anticipated figure would result from the economies that can be effected by combining operations on all levels in the two companies.

The projected profit for 1965 alone is *twice* the total before tax profits for *the past five years*.

Of equal importance, the earning potential of future years should be further improved by projected new business volume of five million per month or sixty million for the year . . . which should result from the combining of *two strong, highly successful sales organizations* totalling approximately 250 licensed agents.

Your Board feels the size, strength, profit potential and expanding sales activities resulting from this merger will result in substantial investor interest in

your company. And, this can mean an increase in market price that would be important to all stockholders.

This merger needs your vote. Approval also means a 20% stock dividend which will increase your stock ownership and equalize the per share value of the two companies.

Delay or failure to send in your proxy can lose these benefits for you and for all stockholders. The proxy enclosed is a *special proxy* and is the *only proxy* which can be counted in favor of the merger. If you did not send in the special proxy approving the merger which was enclosed with my letter of November 27, please sign and return the enclosed proxy.

/s/ A. W. Saffert
A. W. SAFFERT, President

[SEAL]

National Securities, Inc. Affiliate

[EXHIBIT 37]

PRODUCERS LIFE INSURANCE COMPANY
AN OLD LINE LEGAL RESERVE COMPANY
2300 N. CENTRAL • PHOENIX, ARIZONA • AL 8-5711 • P.O. Box 1870

December 18, 1964

Dear Stockholder:

The time for decision is here!

In just a few days the meeting of the stockholders of Producers Life, called to approve the merger between Producers and National Life and Casualty (with Producers the surviving company), will be held.

Your support is essential if this vital forward step is to be taken. You have an opportunity to become a stock-

holder in a 200 million dollar insurance-in-force company that will rank in the upper 20% of all Life companies in the country. In 1965 alone management projects earnings of \$460,000.00 (more than twice the total earnings for the past five years combined). In addition, your company will have the assets, the facilities and the manpower to accelerate its rate of growth to further improve earnings in the years ahead.

If you have not already sent in your proxy *specifically approving* this merger, please sign the enclosed proxy—and mail it today.

If you still have some questions about the points that may have been raised by those who are opposing this important step forward for your company, the enclosed booklet should resolve any questions you may have. Please satisfy yourself that this merger is in your best interest—and then act promptly.

Remember too, upon approval of the merger, you will receive a 20% stock dividend—so that you will own *twelve* shares of stock in the new, larger, stronger and more profitable company for every *ten* shares you now own in Producers Life.

Time is short. Your support is vital. If you have not already sent in your proxy—do so today. This official proxy is the *only* proxy that can be voted *in favor* of the merger.

/s/ A. W. Saffert
A. W. SAFFERT, President

[SEAL]

National Securities, Inc. Affiliate

[EXHIBIT 39]

**PRODUCERS LIFE INSURANCE COMPANY
AN OLD LINE LEGAL RESERVE COMPANY****2300 N. CENTRAL • PHOENIX, ARIZONA • AL 8-5711 • P.O. Box 1870****January 1, 1965****STOCKHOLDERS GIVE MANAGEMENT
OVERWHELMING SUPPORT**

Stockholders voted two to one in favor of Producers Life management on every issue voted on at the December 31, 1964 special meeting.

Management's candidate to the Board of Directors, Joseph C. Shorrock, was elected by a vote of 536,787 to 222,820.

Management's proposal to stagger the terms of the members of the Board to provide for a continuity of management was approved by a vote of 542,384 to 217,329.

Management's proposal to move the date of the annual meeting to June was approved by a vote of 542,172 to 217,487.

Unfortunately, because of the snarl of last minute legal actions filed by the 'stockholder's committee', the merger was not voted on. This legal tangle was created by the 'committee' just two days before the meeting, as the 'committee' was rapidly losing stockholder support.

The meeting was recessed and will be re-convened as soon as practical for the vote on the merger. We are as anxious as you are to have the merger approved.

While we believe there is not one chance in a thousand that any of these desperation legal maneuvers by the 'committee' can succeed, we did not wish to hazard the problems of "un-merging" the two companies. Therefore, management believes it best to have the short delay.

[2] The continuing disruptive efforts of the 'committee', has had the effect of denying you many of the immediate benefits of the merger. The committee knows this. The 'committee's' efforts to get \$25,000 of your company's money for their own personal use . . . and their incredible demands to liquidate or plunge your company into receivership . . . have revealed their true motives. They appear to be determined to destroy your company if they cannot control it.

Fortunately the end is now in sight. It is obvious that the committee, in its total disregard for the interests of stockholders, has come to the end of its confusing and disruptive career. Thousands of stockholders have withdrawn their support from the committee since September. And, the flood of revocations and proxies that we are receiving daily proves that 'committee' support is continuing to dwindle.

These men on the 'committee', although rejected overwhelmingly as the stockholders meeting, may continue their efforts. So you may hear from them again. They have already tried "liquidation" and "receivership" so they may now go to another "gimmick" to try for a few more votes. In fact, they may even pop up with a new name and a new "face" as they did when Olsen and Bush had a one-time fling at proxies. *Stockholders who entrusted them with proxies, just threw away their votes.* Olsen and Bush did not even have enough regard for the trust placed in them to even bother to vote the proxies they received!

[3] The best thing to do now, is simply ignore the 'committee', or any other group that may be a front for raiders. If the last proxy you sent in was just like the enclosed proxy, it is not necessary to send in another one. However, if you are not absolutely certain that the last proxy you have signed was for the merger, then please send in the enclosed proxy and it will be voted in favor of the merger.

National Life stockholders have voted in favor of the merger. Now the final decision is up to you. Our company will be the surviving company with nearly \$200 mil-

lion insurance in force and we will rank in the top 20% of life companies in the nation. The future for our stock price will be the brightest in the history of our company. We will have nearly 250 licensed agents, and will have the facilities, personnel and ability to expand nationally to broaden our sales base.

Projected before-tax profits for 1965 alone are \$460,000, which is more than twice the total before-tax profits for the last five years. That means greater value for all of our stock.

This is the greatest step in our history. Send in the enclosed proxy. And, don't forget that approval of the merger also means a 20% stock dividend for you.

/s/ A. W. Saffert

A. W. SAFFERT, President

[EXHIBIT 41]

PRODUCERS LIFE INSURANCE COMPANY**AN OLD LINE LEGAL RESERVE COMPANY**

2300 N. CENTRAL • PHOENIX, ARIZONA • AL 8-5711 • P.O. Box 1870

February 23, 1965

Dear Stockholder:

If you sent your proxy to the self-appointed 'stockholders committee' as a result of their last mailing, you have been tricked.

They took a legal memorandum from a Superior Court Judge, twisted it, quoted it out of context and added to it, a series of their own distortions and outright misrepresentations. Their action was so flagrant and so damaging to the image of the Court that the Judge sent a personal letter to the lawyers condemning the 'committee' mailing.

The enclosed pamphlet has been prepared to point out many of the outrageous statements contained in the 'committee' mailing. We realize that you are getting sick and tired of all this controversy—but if you have any doubts about the kind of people we are dealing with—we urge you to take a few moments to read it.

We dislike having to attack the motives of anyone. Yet, as your officers and directors we cannot stand by and let the lies and distortions of this splinter group of agitators tie up the activities of your company. We cannot permit this 'committee' hate campaign to deny you the many benefits of the proposed merger. We cannot let these malcontents and disgruntled ex-employees block the greatest opportunity for growth, earnings and development that has ever been available to your company.

We think it is time for some plain speaking.

[2]

THE COMMITTEE . . .

The 'committee' has been overwhelmingly rejected by the great majority of stockholders, their actions have been condemned by the Court, they have used every devious propaganda stunt imaginable to achieve their personal ob-

jectives, and they have consistently made shameful proposals that would seriously damage or destroy your company.

They have no insurance facilities, no top management experience and no knowledge of current company operations. They have never, during this entire period, made a single constructive suggestion or proposal.

On the contrary . . .

They have attempted to have the Court place your company in receivership; they have solicited your proxies to attempt to liquidate your company; they have attempted to hire your salesmen for competitive companies; they have circulated vicious reports and rumors to attempt to destroy the morale of your employees. They have admitted under oath that they were well aware that their activities were damaging to your company.

They quite obviously have no concern whatsoever about the 150 loyal employees who have helped build your company, no regard for the 14,000 stockholders whose investment over the many long years has finally brought your company to the threshold of a truly promising future and no thought for the 35,000 policyholders who have placed the financial security of themselves and their families in the hands of your company.

While the total lack of principle evidenced by their continued destructive tactics has been recognized by the great majority of the stockholders—who have cast their vote for the merger . . . many are still confused or discouraged and have not cast their vote. This is a situation where failure to vote is just as detrimental as voting against the merger—since it requires a two-thirds affirmative vote to approve the merger.

[3]

THE MERGER

The real savings, the real profits and the real benefits to all stockholders can come only through the merger of Producers Life and National Life. Our projected profits from operations for 1965 of \$460,000 are possible only through

operational economies that can be effected as a result of the merger. This is twice the total profits for the past five years for Producers Life. Or, to put it another way, this is ten times the average annual profits of your company for that period. Greater profits mean greater earnings per share for the stock of all stockholders.

Your company will increase in size to nearly \$200 million insurance in force and will move into the top 20% of all life insurance companies in the United States in size. This means greater growth opportunities, greater stature in the industry, and a major improvement in the competitive position of your company. The merged company will be approximately twice as large as the next Arizona life company in assets and premium income, and have nearly 10% of the total life insurance in force of all Arizona companies.

The merger, because of its very size, profit potential and opportunities for dramatic growth, points to a strong market for your stock. Securities analysts and other stock market specialists are strongly recommending the merger because the merged company also will have these elements for impressive growth: Experienced leadership, greater financial strength, full-line computer facilities, complete ranges of policies and services, anticipated premium income of over \$7 million per year, nearly 250 licensed agents, nearly \$20 million in assets and the ability to expand into additional markets.

If you are not absolutely certain that your last vote was cast in favor of the merger, please sign the enclosed proxy—so that we can end this controversy and get on with the much more important job of building a great company.

We have the competent personnel and facilities—the opportunity is here—with your help we can build one of the truly outstanding life insurance companies of America.

/s/ A. W. Saffert
A. W. SAFFERT, President

[EXHIBIT 13]

ANNUAL STATEMENT FOR THE YEAR 1964 OF THE
PRODUCERS LIFE INSURANCE COMPANY

Except for items 34, 35, 41A, 42, 48A, 49, 50 and 51, the figures on this page do not include separate account items, if any.

Dollars Cents

SUMMARY OF OPERATIONS
(ACCRUAL BASIS)

1.	Premiums and annuity considerations (Exhibit 1, Part 1)	
1.1	Life	2,195,855.88
1.2	Accident and health	127,487.12
2.	Considerations for supplementary contracts with life contingencies	-0-
3.	Considerations for supplementary contracts without life contingencies and dividend accumulations	175,484.29
4.	Net investment income (Exhibit 2)	411,557.28
5.	Miscellaneous Income	6,721.34
6.	Contribution by National Securities, Inc.	81,087.76
7.	Total	<u>2,948,143.67</u>
DEDUCT:		
8.	Death benefits	328,443.07
9.	Matured endowments	530.00
10.	Annuity benefits	-0-
11.	Disability benefits	1,356.27
12.	Surrender benefits	137,257.35
12A.	Group conversions	-0-
13.	Benefits under accident and health policies	68,717.82
14.	Interest on policy or contract funds	28,203.36
15.	Payments on supplementary contracts with life contingencies	200.00
16.	Payments on supplementary contracts without life contingencies and of dividend accumulations	216,955.99
17.	Increase in aggregate reserve for policies and contracts with life contingencies	858,822.00
18.	Increase in reserves for supplementary contracts without life contingencies and for dividend accumulations	58,837.38
19.	Increase in reserve for A & H contracts	10,419.83
20.	Subtotal (Items 8 to 19)	<u>1,709,243.07</u>
21.	Commissions on premiums and annuity considerations	443,858.30
22.		
23.	General insurance expenses (Exhibit 5, Cols. 1 and 2, Line 13) ..	814,645.05
24.	Insurance taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Cols. 1 and 2, Line 10)	52,790.00
25.	Increase in loading on and cost of collection in excess of loading on deferred and uncollected premiums	(89,659.92)
26.		
27.	Total (Items 20 to 26)	<u>2,980,876.50</u>
28.	Net gain from operations before dividends to policyholders and federal income taxes and excluding capital gains and losses (Item 7 minus Item 27)	<u>17,267.17</u>

[EXHIBIT 13 Continued]

29. Dividends to life policyholders (Exhibit 7)	86,983.17
30. Dividends on accident and health policies (Exhibit 7)	-0-
31. Increase in amount provisionally held for deferred dividend policies	-0-
32. Total (Items 29 to 31)	<u>86,983.17</u>
32A. Net gain from operations after dividends to policyholders and before federal income taxes, excluding capital gains and losses (Item 28 minus Item 32)	(69,716.00)
32B. Federal income taxes incurred (excluding tax on capital gains) ..	-0-
33. NET GAIN FROM OPERATIONS AFTER DIVIDENDS TO POLICYHOLDERS AND FEDERAL INCOME TAXES (excluding tax on capital gains) AND EXCLUDING CAPITAL GAINS AND LOSSES (Item 32A minus Item 32B)	<u>(69,716.00)</u>

SURPLUS ACCOUNT

Dollars Cents

Dollars Cents

34. Special surplus funds December 31, previous year	332,587.00	43. Dividends to stockholders	41,579.80
35. Unassigned surplus December 31, previous year	\$95,788.86	44. Allocation of costs of dissident stockholders activities	81,000.00
36.		44B.	
36A. Paid in surplus from sale of Company's		45. Net capital losses (Exhibit 4, Line 10.2)	
36B. Treasury stock	268,967.00	46. Increase in reserve on account of change in valuation basis	
37. Net gain (from Item 33)	(69,716.00)	47. Net loss from non-admitted and related items (Exhibit 14, Col. 3, Line 40)	
38. Net capital gains (Exhibit 4, Line 10.2)	400,039.74	48. Increase in mandatory securities valuation reserve	49,444.92
39. Surplus paid-in		48A. Decrease in surplus of Separate Account Business (see Separate Account Statement)	
40. Net gain from non-admitted and related items (Exhibit 14, Col. 3, Line 40)	77,421.82	49. Special surplus funds December 31, current year (Item 27, Page 3)	326,238.00
41. Decrease in mandatory securities valuation reserve		50. Unassigned surplus December 31, current year (Item 29, Page 3)	906,735.70
41A. Increase in surplus of Separate Account Business (see Separate Account Statement)		51. Total	<u>1,404,983.42</u>
42. Total	<u>1,404,983.42</u>		

[EXHIBIT 14]

ANNUAL STATEMENT FOR THE YEAR 1964 OF THE
NATIONAL LIFE & CASUALTY INSURANCE COMPANY

Except for items 24, 35, 41A, 42, 48A, 49, 50 and 51, the figures on this page do not include separate account items, if any. Dollars Cents

SUMMARY OF OPERATIONS
(ACCRUAL BASIS)

1. Premiums and annuity considerations (Exhibit 1, Part 1)	
1.1 Life	2,344,766.89
1.2 Accident and health	86,165.32
2. Considerations for supplementary contracts with life contingencies	-0-
3. Considerations for supplementary contracts without life contingencies and dividend accumulations	197,713.17
4. Net investment income (Exhibit 2)	210,991.90
5. Consideration for increase in cash value—Life Policies Owned	24,126.59
6. Miscellaneous Income	2,975.25
7. Total	<u>2,866,739.12</u>
DEDUCT:	
8. Death benefits	147,102.57
9. Matured endowments	3,000.00
10. Annuity benefits	26,422.28
11. Disability benefits	(368.19)
12. Surrender benefits	364,839.96
12A. Group conversions	-0-
13. Benefits under accident and health policies	42,922.58
14. Interest on policy or contract funds	4,153.54
15. Payments on supplementary contracts with life contingencies	28.88
16. Payments on supplementary contracts without life contingencies and of dividend accumulations	520,291.23
17. Increase in aggregate reserve for policies and contracts with life contingencies	589,542.00
18. Increase in reserves for supplementary contracts without life contingencies and for dividend accumulations	37,627.11
19.	
20. Subtotal (Items 8 to 19)	<u>1,735,561.96</u>
21. Commissions on premiums and annuity considerations	257,382.04
22.	
23. General insurance expenses (Exhibit 5, Cols. 1 and 2, Line 13) ..	794,607.56
24. Insurance taxes, licenses and fees, excluding federal income taxes (Exhibit 6, Cols. 1 and 2, Line 10)	44,235.21
25. Increase in loading on and cost of collection in excess of loading on deferred and uncollected premiums	(29,886.87)
26.	
27. Total (Items 20 to 26)	<u>2,801,899.90</u>
28. Net gain from operations before dividends to policyholders and federal income taxes and excluding capital gains and losses (Item 7 minus Item 27)	<u>64,839.22</u>

[EXHIBIT 14 Continued]

29. Dividends to life policyholders (Exhibit 7)	100,496.10
30. Dividends on accident and health policies (Exhibit 7)	-0-
31. Increase in amount provisionally held for deferred dividend policies	-0-
32. Total (Items 29 to 31)	<u>100,496.10</u>
32A. Net gain from operations after dividends to policyholders and before federal income taxes, excluded capital gains and losses (Item 28 minus Item 32)	(35,656.88)
32B. Federal income taxes incurred (excluding tax on capital gains)	-0-
33. NET GAIN FROM OPERATIONS AFTER DIVIDENDS TO POLICYHOLDERS AND FEDERAL INCOME TAXES (excluding tax on capital gains) AND EXCLUDING CAPITAL GAINS AND LOSSES (Item 32A minus Item 32B)	<u>(35,656.88)</u>

SURPLUS ACCOUNT

Dollars Cents

Dollars Cents

34. Special surplus funds December 31, previous year		43. Dividends to stockholders	
35. Unassigned surplus December 31, previous year	860,446.90	44.	
36.		44A.	
36A.		44B.	
36B.		45. Net capital losses (Exhibit 4, Line 10.2)	477,076.69
37. Net gain (from Item 33)	(35,656.88)	46. Increase in reserve on account of change in valuation basis	
38. Net capital gains (Exhibit 4, Line 10.2)		47. Net loss from non-admitted and related items (Exhibit 14, Col. 3, Line 40),	174,430.32
39. Surplus paid in		48. Increase in mandatory securities valuation reserve	
40. Net gain from non-admitted and related items (Exhibit 14, Col. 3, Line 40)		48A. Decrease in surplus of Separate Account Business (see Separate Account Statement)	
41. Decrease in mandatory securities valuation reserve	148,969.56	49. Special surplus funds December 31, current year (Item 27, Page 3)	
41A. Increase in surplus of Separate Account Business (see Separate Account Statement)		50. Unassigned surplus December 31, current year (Item 29, Page 3)	<u>322,252.57</u>
42. Total	<u>973,759.58</u>	51. Total	<u>973,759.58</u>

**ANNUAL STATEMENT FOR THE YEAR 1964 OF THE
NATIONAL LIFE & CASUALTY INSURANCE COMPANY**

Form 1 Stocks to be granted in the following order and each group arranged alphabetically

SCHEDULE D—Part 2

Showing all STOCKS Owned December 31 of Current Year

THE FIGURES ON THIS PAGE
INCLUDE SEPARATE ACCOUNTS

Railroad (a) preferred (b) common
Public Utilities (a) preferred (b) common
Banks, Trust and Insurance Companies (a) preferred (b) common
Savings and Loan or Building and Loan Associations
Industrial and Miscellaneous (a) preferred (b) common.

Show sub-totals for each group and classification

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)		
DESCRIPTION	No. of Shares	Per Value Per Share	Book Value	Rate Per Share Used To Obtain Market Value	*Market Value	Actual Cost	Rate Declared in Each of Last Three Years		
Give complete and accurate description of all stocks owned and location of all street railway, bank, trust and miscellaneous companies							1962	1963	1964
STOCKS—PUBLIC UTILITY, COMMON									
Arizona Public Service Co.	500	2.50	9,496.61	39.00	19,500.00	10,324.34	.80	.80	.92
Sub-Total—Public Utility, Common			9,496.61		19,500.00	10,324.34			
STOCKS—BANKS, TRUST & INSURANCE COMPANIES, COMMON									
The Franklin Life Insurance Co.	2	2.00	85.50	53.00	106.60	85.50	.50	.25	.35
The Lincoln National Life Insurance Co.	5	5.00	360.00	172.00	860.00	360.00	1.00	1.00	1.20
Producers Life Insurance Co.	135,088	1.00	1,221,049.15	** 4.75	641,668.00	1,221,049.15	.05	.05	.05
Sub-Total—Banks, Trust & Insurance Companies, Common			1,221,494.65		642,634.00	1,221,494.65			
SAVINGS & LOAN—BUILDING & LOAN ASSOCIATIONS									
American Savings & Loan Association			10,000.00		10,000.00	10,000.00	4.50	4.50	4.625
First Federal Savings & Loan of Craig			10,000.00		10,000.00	10,000.00	4.50	4.50	4.50
First Federal Savings & Loan of Denver			10,000.00		10,000.00	10,000.00	4.50	4.50	4.375
Golden Savings & Loan Association			10,000.00		10,000.00	10,000.00	4.75	4.70	4.50
Great West Savings & Loan Association			10,000.00		10,000.00	10,000.00	4.75	4.70	4.45
Lamar Savings & Loan Association			10,000.00		10,000.00	10,000.00	4.50	4.50	4.50
Southwest Savings & Loan Association			10,000.00		10,000.00	10,000.00	4.50	4.75	4.75
Sub-Total—Savings & Loan—Building & Loan Associations			70,000.00		70,000.00	70,000.00			
STOCKS—INDUSTRIAL & MISCELLANEOUS, PREFERRED									
Owen-Illinois Glass Co., Cum. Pfd. \$100	100	100.00	10,030.99	(S) 99.00	9,998.57	10,030.99	4.00	4.00	4.00
Kaiser Cement & Gypsum Corp. (formerly Permonento)	100	50.00	5,380.75	(S) 57.00	5,462.35	5,380.75	5.00	5.00	5.00
The Swanson Company—Cum. Pfd. Series A	500	20.00	10,000.00	(S) 20.00	10,000.00	10,000.00	1.20	1.20	1.20
Sub-Total—Industrial & Miscellaneous, Preferred			25,411.74		25,460.92	25,411.74			
STOCKS—INDUSTRIAL & MISCELLANEOUS, COMMON									
Jaeger Machine Co.	1,500	5.00	19,628.40	12.00	18,000.00	19,628.40	.60	.60	.60
Lytton Financial Co.	416	1.00	9,600.00	14.00	5,824.00	9,600.00	.75	1.00	1.00
McCall Corporation	515	NP	18,812.50	24.00	12,360.00	18,812.50	.50	.50	.40
The Singer Company	200	10.00	18,250.00	80.00	16,000.00	18,250.00	3.10	2.125	2.00
Sub-Total—Industrial & Miscellaneous, Common			61,290.90		52,184.00	61,290.90			
Grand Total—All Stocks			1,857,698.90		809,778.92	1,888,521.63			

**Market value at 12-31-64.

Information being submitted to N.A.I.C.
for valuation.

ANNUAL STATEMENT FOR THE YEAR 1964 OF THE
NATIONAL LIFE & CASUALTY INSURANCE COMPANY

SCHEDULE D—Part 2

Showing all STOCKS Owned December 31 of Current Year

THE FIGURES ON THIS PAGE DO NOT INCLUDE SEPARATE ACCOUNT ITEMS, IF ANY.

mon
(a) preferred (b) common
Associations
arranged (b) common

Show sub-totals for each group and classification

All stocks and bonds	(2)	(3)	(4)	(5)	(6)	(7)	(8)			(9)	(10)	(11)
	No. of Shares	Per Value Per Share	Book Value	Rate Per Share Used To Obtain Market Value	*Market Value	Actual Cost	Dividends			Increase, By Adjustment, In Book Value During Year	Decrease, By Adjustment, In Book Value During Year	Year Acquired
							Rate Declared in Each of Last Three Years					
							1962	1963	1964	Amount Received During Year		
Common	500	2.50	9,496.61	39.00	19,500.00	10,324.34	.80	.80	.92	140.00	None	1959,60,61,62
			9,496.61		19,500.00	10,324.34				140.00	None	
Common	2	2.00	85.50	53.00	106.00	85.50	.50	.25	.35	6.69	None	1955
	5	5.00	360.00	172.00	860.00	360.00	1.00	1.00	1.20	6.00	"	1955
	135,088	1.00	1,221,049.15	** 4.75	641,668.00	1,221,049.15	.05	.05	.05	None	"	1964
			1,221,494.65		642,634.00	1,221,494.65				12.69	None	
Associations			10,000.00		10,000.00	10,000.00		4.50	4.625	725.83	None	1963
			10,000.00		10,000.00	10,000.00	4.50	4.50	4.50	450.00	"	1954
			10,000.00		10,000.00	10,000.00	4.50	4.50	4.375	437.50	"	1954
			10,000.00		10,000.00	10,000.00	4.75	4.70	4.50	450.00	"	1955
			10,000.00		10,000.00	10,000.00	4.75	4.70	4.45	445.00	"	1954
			10,000.00		10,000.00	10,000.00	4.50	4.50	4.50	450.00	"	1954
			10,000.00		10,000.00	10,000.00	4.50	4.75	4.75	475.00	"	1960
			70,000.00		70,000.00	70,000.00				3,433.33	None	
Municipal	100	100.00	10,030.99	(S) 99.00	9,998.57	10,030.99	4.00	4.00	4.00	400.00	None	1963
	100	50.00	5,380.75	(S) 57.00	5,462.35	5,380.75	5.00	5.00	5.00	250.00	"	1961
	500	20.00	10,000.00	(S) 20.00	10,000.00	10,000.00	1.20	1.20	1.20	600.00	"	1959
Mutual			25,411.74		25,460.92	25,411.74				1,250.00	None	
	1,500	5.00	19,628.40	12.00	18,000.00	19,628.40	.60	.60	.60	900.00	None	1963
	416	1.00	9,600.00	14.00	5,824.00	9,600.00	.75	1.00	1.00	Stk. Div.	"	1964
	515	NP	13,812.50	24.00	12,860.00	13,812.50	.50	.50	.40	50.00	"	1964
	200	10.00	18,250.00	80.00	16,000.00	18,250.00	3.10	2.125	2.00	200.00	"	1964
			61,290.90		52,184.00	61,290.90				1,150.00	None	
Total			1,387,693.90		809,778.92	1,388,521.63				5,986.02	None	

[illegible]

[EXHIBIT 15]

[Form S-1 with Financials as of December 31, 1964
for National Securities, Inc.]

Preliminary—Pending Audit Completion

NATIONAL LIFE AND CASUALTY INSURANCE COMPANY

BALANCE SHEET

December 31, 1964

ADMITTED ASSETS (Note A)

Bonds (Note B)	\$1,093,992
Stocks other than affiliates (Note C)	168,111
Stocks of affiliates (Note D):	
Producers Life Insurance Company	641,668
Mortgage loans on real estate, first liens	2,469,984
Real estate (net of \$352,833 encumbrance) (Note E)	995,768
Policy loans	1,296,851
Cash	987,888
Data processing equipment (Note F)	108,936
Premiums due and deferred	495,834
Investment income due and accrued	89,163
Cash value of life policies owned	154,437
Refundable deposits	620
	<u>\$8,447,752</u>

LIABILITIES AND STOCKHOLDERS' EQUITY

LIABILITIES:

Aggregate reserve for all policies (Note G)	\$6,647,044
Policy and contract claims	22,967
Policyholders' funds:	
Premium deposit funds	\$ 126,603
Premiums received in advance	48,319
Policyholders' dividends due and unpaid	7,931
Provision for dividends payable in 1965	<u>101,514</u>
	284,367
Amounts held for others	37,291
Commissions payable	27,406
General expenses and taxes due and accrued	55,182
Unearned investment income	19,626
Mandatory security valuation reserve	10,204
Other liabilities	2,838

STOCKHOLDERS' EQUITY:

Capital stock issued and outstanding (Note H)	\$1,018,574	
Unassigned surplus:		
Paid in	\$ 474,680	
Earned (deficit)	<u>(152,427)</u>	<u>322,253</u>
		1,340,827
		<u>\$8,447,752</u>

See notes to financial statements.

NATIONAL LIFE AND CASUALTY INSURANCE COMPANY

NOTES TO FINANCIAL STATEMENTS

December 31, 1964

A. ADMITTED ASSETS:

The accompanying financial statements have been prepared in conformity with accounting practices prescribed or permitted by the laws of Arizona and the regulations of its Department of Insurance, which practices are designed primarily to demonstrate ability to meet claims of policyholders. Pursuant to such practices, which differ (in some instances materially) from those generally accepted accounting principles followed by other types of business enterprises in their presentation of financial position and results of operations on the "going concern basis", (a) investment securities are carried in accordance with valuations established by the National Association of Insurance Commissioners, i.e., bonds are carried at cost, adjusted where appropriate for amortization of premium or discount, and stocks generally are carried at market values; (b) acquisition costs, such as commissions, costs of medical examinations and investigations, are charged to current operations as incurred; (c) certain assets designated as "non-admitted assets" are charged off against unassigned surplus; and (d) gains and losses, realized or unrealized, on investment securities are recorded directly to unassigned surplus.

"Admitted assets" are those assets permitted to be included in the determination of the financial condition of a life insurer. "Nonadmitted assets" are those not permitted so to be included.

No determination has been made of the effect of such differences on the accompanying financial statements.

The nonadmitted assets at December 31, 1964, amounted to \$547,731.

B. BONDS:

Bonds are carried at amortized cost which is the same as book value. United States Treasury bonds having a face value of \$224,500 and an amortized cost of \$223,761, are on deposit with the Arizona State Treasurer under the control of the Arizona Department of Insurance in conformity with the statutory requirement.

C. INVESTMENTS IN STOCKS OTHER THAN STOCKS OF AFFILIATES:

Stocks are carried at market value of \$168,111. Book value is \$166,645.

D. INVESTMENTS IN STOCK OF AFFILIATES:

During 1964 the Company acquired 135,088 shares of the Common capital stock of Producers Life Insurance Company, an Arizona legal reserve insurer. Of these shares 126,979 shares were acquired from National Securities, Inc. for \$1,175,085.75, the remaining 8,109 shares were purchased through various brokers for \$45,963.40 resulting in a total cost and book value of \$1,221,049.15. The excess of book value over market at December 31, 1964, of \$579,381.15 has been charged to unassigned surplus.

At a special meeting held December 31, 1964, the stockholders of the Company approved a Consolidation Agreement and Plan of Reorganization providing for the merger of the Company into Producers Life Insurance Company. The stockholders of Producers Life Insurance Company have not acted on the proposed merger.

E. REAL ESTATE:

Real estate is stated at book value which is cost, less accumulated depreciation, net of encumbrances and includes the following:

Property occupied by the Company	\$578,141
Property acquired in satisfaction of debt	80,536
Investment property (less mortgage payable of \$352,833)	268,253
Property owned, under contract of sale	68,839
	<u>\$995,769</u>

D. COMPANY STOCK HELD FOR EMPLOYEE PURCHASE PLAN:

The Company has established a plan for its employees whereby the Company purchases its own shares to sell to its employees at cost by means of payroll deductions. At December 31, 1964, \$29,528 was comprised of the following items:

shares purchased for	\$
Amounts withheld from payroll not yet allocated for purchases of specific shares	

\$29,528

E. DEFERRED EXPENSES:

On April 27, 1964, National Securities, Inc., purchased 14.4% of the outstanding capital stock of Producers Life Insurance Company of Phoenix, Arizona. This stock was subsequently sold at cost to National Life and Casualty Insurance Company, a majority owned subsidiary.

At the time of this purchase, National Securities assumed Producers liability for certain existing noncompetition agreements amounting to \$568,551, and entered into new noncompetition agreements amounting to \$979,000. Subsequent to the above transactions, the two companies entered into a five-year management contract effective July 1, 1964. See Note H for information regarding management contract.

The costs of the noncompetition agreements are being amortized over a five-year period as to the \$568,551, and over a ten-year period as to the \$979,000.

F. NOTES PAYABLE:

Stock of National Life and Casualty Insurance Company (675,954 shares) and stock of Southwest Savings and Loan Association (147,000 shares), both majority owned subsidiaries, has been pledged as collateral for 4½% notes in the amount of \$2,193,100. The Company is obligated on an unsecured 5½% note of \$75,000, due March 15,

1965. The cattle owned by the Company are subject to a chattel mortgage to secure a 5% note in the amount of \$56,635.

G. LONG TERM LIABILITIES:

Included in notes and mortgages payable, current and long term, are the following:

	Due Within One Year	Due After One Year	Total Liability
Real estate mortgages (Note B)	\$186,496	\$ 57,583	\$ 244,079
Unsecured 7% note due December 1, 1965, and December 1, 1966	30,000	20,000	50,000
Contracts not to compete (Note E)	193,838	1,292,371	1,486,209
	<u>\$410,334</u>	<u>\$1,369,954</u>	<u>\$1,780,288</u>

H. CONVERTIBLE DEBENTURES:

The 6% convertible debentures issued by National Securities (of which \$20,000,000 are authorized) mature July 1, 1981, with interest payable annually on July 1, and are convertible to Common stock at the book value of such stock as of the preceding December 31.

In connection with the merger of Arizona Public Finance Company with National Securities, Arizona Public issued 6% Series B convertible debentures to those persons holding 5% Series A debentures who did not elect to convert them to National Securities Common stock. The Series B debentures, which became an obligation of National Securities, mature June 27, 1983, and are convertible to Common stock of National Securities at the book value of such stock as of the preceding December 31.

As of December 31, 1964, there were outstanding \$620,150 of the original debentures and \$216,580 of the Series B debentures. The amount shown as outstanding for Series B debentures.

* * * *

[Entered February 7, 1966]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil No. 5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., A CORPORATION, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, A CORPORATION, ROBERT H. WALLACE, ROBERT C. BOHANNON, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRITT, JOSEPH B. SETTER, BREEFERD W. LARGE, JR. AND PRODUCERS LIFE INSURANCE COMPANY, A CORPORATION (ALSO KNOWN AS NATIONAL PRODUCERS LIFE INSURANCE COMPANY), DEFENDANTS

ORDER GRANTING MOTION FOR
PROTECTIVE ORDER

The cause having come before the Court upon defendant's motion for a protective order, and the motion having been submitted for decision upon the record and briefs on file; and it appearing to the Court that no showing has been made that any discovery plaintiff might secure by taking the deposition of defendant ARTHUR W. SAFFERT could aid in any way a discovery of facts which would perfect or tend to perfect a statement of a claim by plaintiff on which relief could be granted in this Court, under the law as it existed at the time of the events upon which plaintiff's asserted causes of action are based.

[2] IT IS ORDERED AND ADJUDGED that defendants' motion for a protective order to prevent the taking of a deposition of defendant ARTHUR W. SAFFERT is hereby GRANTED.

IT IS FURTHER ORDERED that the Clerk promptly serve copies of this order by United States mail upon the attorneys for the parties appearing in this cause.

February 7, 1966.

/s/ Wm. C. Mathes
Senior United States District Judge

[Entered February 7, 1966]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil No. 5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., A CORPORATION, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, A CORPORATION, ROBERT H. WALLACE, ROBERT C. BOHANNON, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRETT, JOSEPH B. SETTER, BREEFERD W. LARGE, JR. AND PRODUCERS LIFE INSURANCE COMPANY, A CORPORATION (ALSO KNOWN AS NATIONAL PRODUCERS LIFE INSURANCE COMPANY), DEFENDANTS.

ORDER DENYING PLAINTIFF'S MOTION TO
AMEND TO ADD PARTIES DEFENDANT

This cause having come before the Court upon plaintiff's motion to amend to add parties defendant, and the motion having been submitted for decision upon the record and briefs on file; and it appearing to the Court that, while there may be actionable claims against some of the proposed additional defendants for alleged breaches of

fiduciary duty under the laws of Arizona, the Securities and Exchange Commission has not asserted, and cannot assert under any Federal statute which the Commission is charged with the duty to enforce, a cause of action against these proposed defendants [see: *O'Neill v. Maytag*, 339 F.2d 764 (2nd Cir. 1964); *Birnbaum v. Newport Steel Corp.*, 193 F.2d 461 (2nd Cir. 1961)].

IT IS ORDERED that plaintiff's motion to add additional parties defendant is hereby DENIED.

IT IS FURTHER ORDERED that the Clerk of the Court promptly serve copies of this order by United States mail upon the parties appearing in this cause.

February 7, 1966.

/s/ Wm. C. Mathes
Senior United States District Judge

* * * * *

UNITED STATES DISTRICT COURT,
DISTRICT OF ARIZONA

Civil No. 5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., A CORPORATION, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, A CORPORATION, ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRETT, JOSEPH B. SETTER, BREEFERD W. LARGE, JR. AND PRODUCERS LIFE INSURANCE COMPANY, A CORPORATION (ALSO KNOWN AS NATIONAL PRODUCERS LIFE INSURANCE COMPANY), DEFENDANTS.

ORDER ON DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

The cause having come before the Court upon defendants' motion for judgment on the pleadings or, in the alternative, for summary judgment; and the motion having been submitted for decision upon the record and briefs on file; and it appearing to the Court that:

[1] 1. A motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure raises the identical issue posed by a motion under Rule 12(b) (6), namely, whether the complaint states a claim upon which relief can be granted [see: *Friedman v. Washburn Co.*, 145 F.2d 715 (7th Cir. 1944); *Art Metal Construction Co. for Use of McCloskey & Co. v. Lehigh Structural Steel Co.*, 116 F.2d 57 (3rd Cir. 1940); 1A *Barron & Holtzoff, Federal Practice & Procedure* § 359, p. 398];

2. Plaintiff's Amended and Supplemental Complaint alleges violations of § 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 CFR 240.10b-5], arising from defendants' use of the mails in the solicitation of proxies for a proposed consolidation and reorganization of two stock insurance companies; the gist of the charge being that the solicitation material so mailed allegedly contained positive misrepresentations of material facts, and also failed to state material facts necessary to make the statements therein not misleading in light of the circumstances under which they were made;

3. The complaint prays for injunctive relief, and also demands—

That the Court enter a decree requiring and compelling the defendants and each of them to take all actions and measures which are necessary to rectify and correct the consequences of the wrongful and unlawful conduct of defendants as specified above and to restore Producers Life, National Life, their stockholders and the defendants to the status and economic condition which they occupied prior to April 27, 1964.

That the Court enter a decree requiring and compelling the defendants and each of them to make an accounting of the extent to which their actions and the actions of the selling directors in violation of Section 10(b) of the Act, 15 U.S.C. § 78j(b), and Rule 17 CFR 240.10b-5, and in derogation of the rights and interest of the stockholders of Producers Life, have resulted in damage to such stockholders, and the extent to which the defendants have been unjustly enriched at the expense of such stockholders; and that, by suitable decree of the Court, the respective equities of the defendants and the stockholders of Producers Life be arranged and adjusted on a fair and equitable basis, including, if warranted on the basis of the accounting made by the defendants, the subordination of the stock interests and other equities of National Securities in National Producers to the interests of those stockholders whose

equities have been diminished by reason of the unlawful and wrongful conduct of the defendants.

That the Commission may have all further relief that the Court may deem just, equitable, and necessary in the circumstances;

4. The acts complained of would fall within the prohibitions of the proxy-solicitation-anti-fraud provision of § 14 of the 1934 Act [15 U.S.C. § 78n], as implemented by Rule 14-9 [17 CFR 240.14a-9], but for the fact that the stock of the insurance companies involved has never been registered on any national securities exchange;

5. Not until sometime during 1966 will the coverage of § 14 be extended, by virtue of the act of August 20, 1964 [78 Stat. 569], to any corporation similarly situated to the insurance companies involved in this action; and then only if not exempted by new § 12(g)(2)(G) of the 1934 Act [15 U.S.C. § 78l(g)(2)(G)] which excludes "any security issued by an insurance company" provided the insurance company is subject to certain defined State regulation;

6. The legislative history of this new § 12(g)(2)(G) exemption includes, inter alia, the following:

This * * * amendment was adopted following testimony by a number of State insurance commissioners and representatives of stock insurance companies who unanimously opposed the subjecting of these insurance companies to the jurisdiction of the Securities and Exchange Commission in addition to the jurisdictions of the various State commissioners. Further, these witnesses opposed departure by the bill from the doctrine embodied in the McCarran Act that the regulation of insurance companies be left to the States. [House Report No. 1418, May 19, 1964; 1964 U.S. Code Cong., and Admin. News 8022];

7. Even if it be assumed that § 10(b) would otherwise be applicable to proxy solicitations [but see *Borak v. J. I. Case Co.*, unreported in the District Court, 317 F.2d 838, 846-847 (7th Cir. 1963), *aff'd* on other grounds, *sub nom. J. I. Case Co. v. Borak*, 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964)], and that a shareholder-approved cor-

porate consolidation and reorganization is a "purchase or sale" of securities within the meaning of § 10(b) and Rule 10b-5 [compare *H. L. Green Co. v. Childree*, 185 F. Supp. 95 (S.D.N.Y.1960), and *Voege v. American Sumatra Tobacco Corp.*, 241 F.Supp. 369 (D.Dela.1965), with *National Supply Co. v. Leland Stanford Jr. University*, 184 F.2d 689 (9th Cir. 1948), and *Sawyer v. Pioneer Mill Co.*, 190 F.Supp. 21 (D.Hawaii 1960), remanded 300 F.2d 200 (9th Cir. 1962), cert. den., 371 U.S. 814, 83 S.Ct. 24, 9 L.Ed.2d 55 (1962)], there still remains the question of whether the McCarran Act [59 Stat. 33, 15 U.S.C. §§ 1011-1015] does not preclude the application in this case of § 10(b), as implemented by Rule 10b-5;

8. 15 U.S.C. § 1012(b) states, in part:

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance * * *;

9. The law of Arizona requires that any proposed merger of stock insurance companies be submitted to the Director of Insurance for his approval in accordance with the criteria set forth in A.R.S. § 20-731, which reads as follows:

A. A domestic stock insurer of any kind may merge or consolidate with another domestic or foreign stock insurer by complying with the provisions of general law governing the merger or consolidation of stock corporations formed for profit, but subject to subsection B of this section.

B. No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with and approved in writing by the director of insurance. The director shall give his approval within a reasonable time after filing unless he finds the plan or agreement:

1. Is contrary to law.
2. Inequitable to the stockholders of any domestic insurer involved.

8. Would substantially reduce the security of service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

10. Arizona law further provides for an appeal to the State courts from a decision of the Director of Insurance made under the authority of A.R.S. § 20-731 [see A.R.S. §§ 20-161—20-166];

11. Moreover, the remedies which the Securities and Exchange Commission may seek in this Court are governed by § 21 (e) of the 1934 Act, which provides:

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule or regulation thereunder, it may in its discretion bring an action in the proper district court of the United States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter. [15 U.S.C. § 78u(a)]; and

[2] 12. The allegations of the Amended and Supplemental Complaint at bar, if taken to be true, are insufficient to warrant issuance of an injunction against future violations of § 10(b) and Rule 10b-5, since the requested relief of invalidation by this Court of the corporate merger, now finally approved by the Arizona Director of Insurance pursuant to A.R.S. § 20-731, would at least "impair", if not "invalidate" or "supercede", laws enacted by the State of Arizona "for the purpose of regulating the business of insurance", within the meaning of the applicable provisions of the McCarran Act [15 U.S.C. § 1012(b)]; and

[3] 13. Finally, plaintiff's demand for relief allegedly "necessary to rectify and correct the consequences of the

wrongful and unlawful conduct of defendants", includes a prayer for an accounting for unjust enrichment and other relief, which would be inappropriate (cf. Note, 79 Harv. L.Rev. 656 (1966); but see; III Loss, Securities Regulation 1824-1829 (2nd Ed. 1961); Cary, Book Review, 75 Harv.L.Rev. 857, 861 (1962)] and would, in all events, fall outside the scope of available relief provided in § 21(e) of the 1934 Act [15 U.S.C. § 78u(e)];

Accordingly, it is ordered that defendants' motion for judgment on the pleadings is hereby granted.

It is further ordered that defendants serve and lodge with the Clerk of the Court, within ten days from the date of this order, an appropriate form of judgment, which shall provide that plaintiff's action be dismissed without costs to any party, and that the judgment shall not constitute an adjudication upon the merits [Rule 41(b), Fed. Rules Civ. Proc.].

It is further ordered that the Clerk promptly serve copies of this order by United States mail upon the attorneys for the parties appearing in this cause.

(S) WM. C. MATHES,
Senior United States District Judge.

FEBRUARY 11, 1966.

[Entered March 14, 1966]

UNITED STATES DISTRICT COURT,
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. 5466-Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., A CORPORATION, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, A CORPORATION, ROBERT H. WALLACE, ROBERT C. BOHANNAN, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRETT, JOSEPH B. SETTER, BREEFERD W. LARGE, JR. AND PRODUCERS LIFE INSURANCE COMPANY, A CORPORATION (ALSO KNOWN AS NATIONAL PRODUCERS LIFE INSURANCE COMPANY), DEFENDANTS.

JUDGMENT

This cause came on to be heard on Defendants' Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment, and the Court being fully advised finds that the allegations in the pleadings fail to state a claim for which relief can be granted at the suit of the plaintiff in this action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants' Motion for Judgment on the Pleadings be and the same is hereby granted, each party to bear its own costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Judgment shall not constitute an adjudication upon the merits.

DONE this 14th day of March, 1966.

/s/ Wm. C. Mathes,
Senior Judge

[Filed April 25, 1966]

UNITED STATES DISTRICT COURT,
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. 5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., A CORPORATION, NATIONAL
LIFE & CASUALTY INSURANCE COMPANY, A CORPORATION,
ROBERT H. WALLACE, ROBERT C. BOHANNAN,
JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S.
BARRETT, JOSEPH B. SETTER, BREEFERD W. LARGE,
JR. AND PRODUCERS LIFE INSURANCE COMPANY, A
CORPORATION (ALSO KNOWN AS NATIONAL PRODUCERS
LIFE INSURANCE COMPANY), DEFENDANTS.

NOTICE OF APPEAL

Notice is hereby given that the Securities and Exchange
Commission, plaintiff herein, hereby appeals to the United
States Court of Appeals for the Ninth Circuit from the
judgment signed on March 14, 1966, and entered in the
Clerk's records on March 28, 1966, granting defendants'
Motion for Judgment on the Pleadings.

/s/ Arthur E. Pennekamp
ARTHUR E. PENNEKAMP
Regional Administrator

/s/ W. Stevens Tucker
W. STEVENS TUCKER
Assistant Regional Administrator

/s/ F. E. Kennamer, Jr.
F. E. KENNAMER, JR.
Assistant General Counsel
San Francisco Regional Office
Securities and Exchange Commission
San Francisco, California 94102

Dated: April 25, 1966.

[Filed May 4, 1966]

UNITED STATES DISTRICT COURT,
DISTRICT OF ARIZONA
(Phoenix Division)

Civil Action No. 5466 Phx.

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

NATIONAL SECURITIES, INC., A CORPORATION, NATIONAL LIFE & CASUALTY INSURANCE COMPANY, A CORPORATION, ROBERT M. WALLACE, ROBERT C. BOHANNAN, JR., ARTHUR W. SAFFERT, TED WILKINS, JOHN S. BARRETT, JOSEPH B. SETTER, BREEFERD W. LARGE, JR. AND PRODUCERS LIFE INSURANCE COMPANY, A CORPORATION (ALSO KNOWN AS NATIONAL PRODUCERS LIFE INSURANCE COMPANY), DEFENDANTS.

DESIGNATION OF RECORD

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, the Securities and Exchange Commission, plaintiff herein, hereby designates the entire record in this action as the record on appeal to the United States Court of Appeals for the Ninth Circuit.

/s/ Arthur E. Pennekamp
ARTHUR E. PENNEKAMP
Regional Administrator

/s/ W. Stevens Tucker
W. STEVENS TUCKER
Assistant Regional Administrator

/s/ F. E. Kennamer, Jr.
F. E. KENNAMER, JR.
Assistant General Counsel
San Francisco Regional Office
Securities and Exchange Commission
San Francisco, California 94102

Dated: May 4, 1966.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21,146 [November 14, 1967]

SECURITIES AND EXCHANGE COMMISSION, APPELLANT

v.

NATIONAL SECURITIES, INC., A CORPORATION; NATIONAL LIFE & CASUALTY INSURANCE COMPANY, A CORPORATION; ROBERT H. WALLACE; ROBERT C. BOHANNAN, JR.; ARTHUR W. SAFFERT; TED WILKINS; JOHN S. BARRETT; JOSEPH B. SETTER; BREEFERD W. LARGE, JR.; RICHARD G. JOHNSON; ERNEST A. RICHARDS; WILLIAM A. REEDY; BONNIE B. BILBREY; PRODUCERS LIFE INSURANCE COMPANY, A CORPORATION; AND PRODUCERS THRIFT & LOAN COMPANY, A CORPORATION; APPELLEES

On Appeal from the United States District Court
for the District of Arizona

Before JERTBERG and MERRILL, *Circuit Judges*, and
TAYLOR, *District Judge*.

JERTBERG, *Circuit Judge*: Before us is an appeal under 28 U.S.C. § 1291 by the plaintiff below and appellant in this court, Securities and Exchange Commission, from a final judgment of the United States District Court for the District of Arizona granting judgment on the pleadings for the defendants below, appellees here. The action was brought pursuant to Section 21e of the Securities and Exchange Act of 1934, 15 U.S.C. 78u(e), to enjoin violations of the anti-fraud provisions of that Act. Sec. 10(b), 15 U.S.C. 78j(b), and Rule 10b-5 of that Act, 17 CFR 240.10b-5, and for other relief.

Appellant sought to undo the merger of two stock life insurance companies on the ground that the proxy solicitation material mailed to the stockholders of the two firms

contained positive misrepresentation of material facts; and also failed to state material facts necessary to make the statements therein not misleading in light of the circumstances under which they were made.

Appellee National Securities, Inc. is a Colorado corporation doing business in Arizona as a holding company owning a controlling interest in the stock of National Life & Casualty Insurance Company, an Arizona corporation. Appellees Wallace, Bohannon, Saffert, Wilkins, Barrett, Setter and Large are officers of the appellees National Securities, National Life, or another subsidiary of National Securities.

Appellee Producers Life Insurance Company is an Arizona corporation which conducts a life insurance business in Arizona and other western states.

As of April 27, 1964, Producers Life had approximately 14,000 stockholders with 880,000 shares of common stock issued and outstanding, including 50,203 treasury shares. Of that total, 66,320 shares were owned directly by a group consisting of Richard G. Johnson, Ernest A. Richards, William A. Reedy, Bonnie B. Bilbrey, and Producers Thrift & Loan Company, an Arizona corporation, whose stock was owned by Johnson, Richards, Reedy, Bilbrey and one other person, the first four being referred to in this litigation¹ as the "selling directors." The selling directors, together with J. Grant Iverson, Jess E. Hunter, and John J. Falconer, made up Producers Life's board of directors. In addition, the selling directors other than Bilbrey held voting proxies for about 565,000 shares.

The amended and supplemental complaint in substance alleges that since March 15, 1964, appellees and the selling directors have made use of means and instrumentalities in interstate commerce and the mails to advance a scheme by manipulative and deceptive devices in connection with the purchase and sale of stock in Producers Life and National Life to defraud Producers Life and its stockholders

¹ They, along with Producers Thrift & Loan Company, are not now parties to the action, the suit as to them having been dismissed without prejudice on April 16, 1965, R. 291, and appellant's motion to amend its amended complaint to include them having been denied on February 7, 1966. R. 794.

by making false and misleading statements, and that since that date appellees have effected various arrangements with the ultimate purpose of merging Producers Life with National Life in derogation of the rights of Producers Life's stockholders, and contrary to the fiduciary responsibilities of the selling directors and appellees Wallace, Saffert, Wilkins, Barrett, and Large.

The complaint sets forth in detail the various acts, transactions and occurrences which transpired, leading up to the consolidation agreement of November 27, 1964, between National Life and Producers Life. The agreement provided for the submission of the agreement to the stockholders of Producers Life and National Life.

Beginning in August, 1964, appellees National Securities, National Life, Bohannon, Wallace, Saffert, Wilkins, Barrett, Setter and Large conducted a proxy solicitation campaign by mailing communications to Producers Life's 14,000 stockholders throughout the United States. It is the alleged material misstatements and the alleged omission of material facts in these proxy solicitation communications of which appellant complains.

The complaint then alleges, in detail, numerous misstatements and omissions of material facts.

A special stockholders' meeting was held on April 19, or 26, 1965, at which the shareholders approved and confirmed the merger.

The complaint further alleges that following the stockholders meeting, the appellees sent false and misleading statements to the shareholders of Producers Life. It is further alleged that the consolidation agreement is void as an essential element of a fraudulent scheme and because it had never been validly approved by the requisite two-thirds majority of the stockholders.

It appears that the merger agreement was submitted to the Arizona Director of Insurance on May 7, 1965, and approved by him on July 9, 1965. It further appears that since that time the National Group has conducted the affairs of National Life and Producers Life as a single operation.

In the court below, appellant prayed for the following relief—

(1) that the alleged occurrences be adjudged fraudulent and in violation of § 10(b) and Rule 10b-5;

(2) that a preliminary and permanent injunction be entered against appellees to restrain them from further violations of § 10(b) and Rule 10b-5 in connection with any plan of reorganization, merger, etc., or with the solicitation of proxies to accomplish such plan;

(3) that appellees rectify the consequences of their wrongful conduct and restore Producers Life, National Life, their stockholders, and appellees to their status and economic condition as it existed prior to April 27, 1964;

(4) that appellees make an accounting for their unjust enrichment and the damage to the stockholders;

(5) that the equities of appellees and the stockholders of Producers Life be adjusted on a fair and equitable basis, including, if necessary, the subordination of National Securities' interests in National Producers; and

(6) any other relief which the court may deem just and equitable.

On September 1, 1965, appellees filed a motion for judgment on the pleadings or, in the alternative, for summary judgment. The district court granting the motion for summary judgment on the pleadings,² stated inter alia:

7. Even if it be assumed that § 10(b) would otherwise be applicable to proxy solicitations [citations omitted], and that a shareholder-approved corporate consolidation and reorganization is a 'purchase or sale' of securities within the meaning of § 10(b) and Rule 10b-5 [citations omitted], there still remains the question of whether the McCarran Act [59 Stat. 33, 15 U.S.C. §§ 1011-1015] does not preclude the application in this case of § 10(b), as implemented by Rule 10b-5;

8. 15 U.S.C. § 1012(b) states, in part:

² 252 F.S. 623 (D of Arizona) 1966.

"No Act of Congress shall be construed to invalidate, impair, or supercede any law enacted by any State for the purpose of regulating the business of insurance * * *";

9. The law of Arizona requires that any proposed merger of stock insurance companies be submitted to the Director of Insurance for his approval in accordance with the criteria set forth in A.R.S. § 20-731, which reads as follows:

"A. A domestic stock insurer of any kind may merge or consolidate with another domestic or foreign stock insurer by complying with the provisions of general law governing the merger or consolidation of stock corporations formed for profit, but subject to subsection B of this section.

"B. No such merger or consolidation shall be effected unless in advance thereof the plan and agreement therefor have been filed with and approved in writing by the director of insurance. The director shall give his approval within a reasonable time after filing unless he finds the plan or agreement:

1. Is contrary to law.
2. Inequitable to the stockholders of any domestic insurer involved.
3. Would substantially reduce the security of the service to be rendered to policyholders of the domestic insurer in this state or elsewhere."

10. Arizona law further provides for an appeal to the State courts from a decision of the Director of Insurance made under the authority of A.R.S. § 20-731 [see A.R.S. §§ 20-161-20-166];

11. Moreover, the remedies which the Securities and Exchange Commission may seek in this Court are governed by § 21 (e) of the 1934 Act, which provides:

"Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule or regulation thereunder, it may in its discretion bring an action in the proper district court of the

United States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter." [15 U.S.C. § 78u(e)]; and

12. The allegations of the Amended and Supplemental Complaint at bar, if taken to be true, are insufficient to warrant issuance of an injunction against future violations of § 10(b) and Rule 10b-5, since the requested relief of invalidation by this Court of the corporate merger, now finally approved by the Arizona Director of Insurance pursuant to A.R.S. § 20-731, would at least "impair", if not "invalidate" or "supercede", laws enacted by the State of Arizona "for the purpose of regulating the business of insurance", within the meaning of the applicable provisions of the McCarran Act [15 U.S.C. § 1012(b)];

Appellant specifies that the district court erred:

1. [I]n granting defendants' [appellees'] motion for judgment on the pleadings on the ground that the McCarran Act precluded the application of the anti-fraud provisions of the Securities Exchange Act, Section 10(b), and Rule 10b-5 thereunder.

2. [I]n holding that it could not grant relief to "rectify and correct the consequences" of defendants' [appellees'] unlawful conduct and that it would be inappropriate and outside the scope of relief afforded by the Securities Exchange Act for the court to grant, as part of the requested remedy, an accounting for unjust enrichment and other relief.

3. [T]o the extent it may have suggested that the fraudulent statements made in connection with the consolidation of Producers Life and National Life into National Producers and the fraudulent omissions in the purchase of Producers Life treasury stock were

not "in connection with the purchase or sale" of securities within the meaning of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

Appellees contend on this appeal that the suit must be dismissed for want of indispensable parties. The indispensable parties referred to are Johnson, Richards, Reedy and Bilbrey referred to earlier in this opinion as the "selling directors", and Producers Thrift & Loan Company, who are not now parties to the action. (See fn. 1).

It is clear that the district court did not reach the question whether the consolidation of Producers Life and National Life into National Producers involved purchases or sales of securities in connection with which the alleged fraud occurred.

In view of the conclusion which we have reached, we shall discuss only one of the issues of law raised by appellant. That issue is whether the allegations of the amended and supplemental complaint, which allegations must be presumed by us to be true, warrant the invalidation of the merger in light of the provisions of the McCarran Act.

The preamble to the McCarran Act sets forth its purpose:

Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States. 15 U.S.C. § 1011.

The Act further provides:

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance. * * * 15 U.S.C. § 1012(b).

The Act then makes certain federal statutes (Sherman Act, Clayton Act, and Federal Trade Commission Act)

applicable to the business of insurance "to the extent that such business is not regulated by State law", and other Federal statutes (National Labor Relations Act, Fair Labor Standards Act of 1938, and Merchant Marine Act, 1920) fully applicable to the business of insurance. 15 U.S.C. §§ 1012(b), 1014.

The McCarran Act was passed following the decision in *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944). In that case the Supreme Court held that interstate transactions in the business of insurance were interstate commerce and therefore subject to regulation by Congress under the commerce clause. This decision upset the previously long-held understanding that the business of insurance was not commerce and was subject only to state regulation. On this understanding was built a substantial structure of regulation by the states. "[T]he states took over exclusively the function of regulating the insurance business in its specific legislative manifestations. Congress legislated only in terms applicable to commerce generally, without particularized reference to insurance." *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408, 415 (1946).

Immediately after the *South-Eastern Underwriters* decision, Congress took action on previously-introduced bills to exempt the insurance business from federal anti-trust regulation. But the ultimate result was a bill which enunciated a considerably broader policy. The focus shifted from a narrow exemption from the Sherman and Clayton Acts to a general policy of exemption with specific exceptions to that policy. As was stated by the co-author of the bill, Senator Ferguson:

If there is on the books of the United States a legislative act which relates to the interstate commerce, if the act does not specifically relate to insurance, it would not apply at the present time. Having passed the bill now before the Senate, if Congress should tomorrow pass a law relating to interstate commerce, and should not specifically apply the law to the business of insurance, it would not be an implied repeal of this bill, and this bill would not be affected, because the Congress had not, under subdivision (b), said that

the new law specifically applied to insurance. 91 Cong. Rec. 481 (1945).

The following colloquy between Senator Ferguson and another major draftsman of the bill, Senator O'Mahoney, makes the same point:

Mr. FERGUSON. What we have in mind is that the insurance business, being interstate commerce, if we merely enact a law relating to interstate commerce, or if there is a law now on the statute books relating in some way to interstate commerce, it would not apply to insurance. We wanted to be sure that the Congress, in its wisdom, would act specifically with reference to insurance in enacting the law.

Mr. O'MAHONEY. In other words, no existing law and no future law should, by mere implication, be applied to the business of insurance.

Mr. FERGUSON. That is correct. 91 Cong. Rec. 1487 (1945).

It is clear that the Securities Exchange Act of 1934, appellant's statutory mainstay in this case, is grounded on Congress' power to regulate interstate commerce. See 15 U.S.C. § 78b. Cf. Preamble to Securities Act of 1933, 48 Stat. 74. There is no reference to the Securities Exchange Act in the debates on the McCarran Act. We are left then with a general intention to set the insurance business outside the scope of all existing and future legislation regulating interstate commerce, without any more direct evidence that Congress had in mind the Securities Exchange Act.* However, Congress was apparently seeking to define an exemption for insurance coterminous with its power to regulate interstate commerce. This is evident from sections 3 and 4 of the McCarran Act, 15 U.S.C. §§ 1013, 1014. There, Congress enumerated spe-

* There is evidence, however, that the role of the S.E.C. had been discussed in Congressional hearings held prior to the McCarran Act on the general subject of federal regulation of the insurance industry. See Joint Hearing before the Subcommittee of the Committee on the Judiciary, 78th Cong., 2d Sess., pt. 6, at 640 (1944); Sen. Doc. No. 35, 77th Cong., 1st Sess. at 41-42, 45, and 596 (1941).

cific statutes, grounded on its interstate commerce power, and the extent to which they should apply. It is significant that Congress felt that such diverse acts as the National Labor Relations Act and the Federal Trade Commission Act would otherwise have fallen within the exemption.

Mr. O'MAHONEY. * * * In drafting [the McCarran Act] we sought to spell out each particular law which might apply to insurance. We referred specifically to the Federal Trade Commission Act, the Robinson-Patman Act, the National Labor Relations Act, and the Fair Labor Standards Act. In other words, a good faith attempt was made to specify every single law which had an application, or might have an application, to insurance. 91 Cong. Rec. 483 (1945).

An equally vital purpose of the McCarran Act was to preserve intact from any federal intrusion based on the commerce clause, existing and future State regulation of the insurance industry. The commerce clause was not to be used as a springboard for federal regulation in the absence of specific statutory reference to insurance. By enacting the McCarran Act, Congress "clearly put the full weight of its power behind existing and future state legislation to sustain it from any attack under the commerce clause to whatever extent this may be done with the force of that power behind it, subject only to the exceptions expressly provided for." *Prudential Insurance Co. v. Benjamin, supra*, at 431. The major proponent of the bill, Senator McCarran, himself made this same point: "In enacting this law, Congress held out an invitation to the States to deal affirmatively and effectively with those activities and practices of the insurance business which might otherwise be subject to federal regulation." McCarran, *Federal Control of Insurance*, 34 A.B.A.J. 539, 540 (1948). See also Donovan, *Regulation of Insurance under the McCarran Act*, 15 Law & Contemp. Prob. 473, 490 (1950).

The State of Arizona accepted the invitation of the McCarran Act.

Among the purposes of this article is the regulation of trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945, 59 Stat. 33, by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. Ariz. Rev. Stat. § 20-441 (1956).

The prohibited practices are then set out in subsequent sections. See Ariz. Rev. Stat. §§ 20-442—20-456. The section of the Arizona Insurance Code relating to mergers states:

A. A domestic stock insurer of any kind may merge or consolidate with another domestic or foreign stock insurer by complying with the provisions of general law governing the merger or consolidation of stock corporations formed for profit, but subject to subsection B of this section.

B. No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with and approved in writing by the director of insurance. The director shall give his approval within a reasonable time after filing unless he finds the plan or agreement:

1. Is contrary to law.
2. Inequitable to the stockholders of any domestic insurer involved.
3. Would substantially reduce the security and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

C. If the director does not approve the plan or agreement he shall so notify the insurer in writing specifying his reasons therefor. Ariz. Rev. Stat. § 20-781 (1959).

* The 1967 amendment to this section, effective January 1, 1968, makes special provision for title insurers but otherwise leaves the section intact.

The State of Arizona has affirmatively asserted its power to regulate the merger of insurance companies. It has not merely deemed such mergers to be legal, nor perfunctorily incorporated by reference its corporate merger provisions, but has set out additional standards and empowered a state agent to enforce them. The fact that these standards are not identical to those in the federal securities laws is not sufficient to allow the engrafting of federal standards into the merger.

It is not required that the assertion of State regulatory authority over a particular phase or practice of the insurance business shall provide the most effective regulation possible or that it shall be equally strict as the applicable federal law in the same field. Congress has recognized the right of the States to apply their own public policy in the regulation of the business of insurance. The important thing is that the State, with respect to the particular field of insurance or sphere of insurance activity, or the particular practice in question, shall have asserted its authority and imposed its regulatory powers. McCarran, *Federal Control of Insurance*, *supra*, at 541-542.⁵

Some light is shed on this problem by the enactment of the Securities Acts Amendments of 1964, 78 Stat. 565 (1964), effective in 1966, insofar as their legislative history displays Congress' current understanding of the scope of the McCarran Act.⁶

⁵ See, to the same effect, communication to the Yale Law Journal from Senator McCarran, dated April 21, 1950, quoted in Note, 60 Yale L.J. 160 at 163, n.11 (1951).

⁶ The House Committee Report includes the following:

"This committee amendment [excluding insurance companies on certain conditions] was adopted following testimony by a number of State insurance commissioners and representatives of stock insurance companies who unanimously opposed the subjecting of these insurance companies to the jurisdiction of the Securities and Exchange Commission in addition to the jurisdiction of the various State commissioners. Further, these witnesses opposed departure by the bill from the doctrine embodied in the McCarran Act that regulation of insurance companies be left to the States. The basic

As stated by the district court in its order granting judgment of dismissal:

4. The acts complained of would fall within the prohibitions of the proxy-solicitation-antifraud provision of § 14 of the 1934 Act [15 U.S.C. § 78(n)], as implemented by Rule 14a-9 [17 CFR 240.14a-9], but for the fact that the stock of the insurance companies involved has never been registered on any national securities exchange;

5. Not until sometime during 1966 will the coverage of § 14 be extended, by virtue of the act of August 20, 1964 [78 Stat. 569], to any corporation similarly situated to the insurance companies involved in this action; and then only if not exempted by new § 12(g) (2) (G) of the 1934 Act [15 U.S.C. § 78(1) (g) (2) (G)] which excludes "any security issued by an insurance company" provided the insurance company is subject to certain defined State regulation;

objection advanced by these witnesses went not to the requirements for the protection of investors for disclosure but only to the jurisdictional question.

"The thrust of the testimony by these representatives of the State insurance commissioners was that they be given an opportunity to demonstrate their ability effectively to protect the investors as well as the policyholders. The committee amendment gives these State commissioners this opportunity so to do." 1965 U.S. Code Cong. & Admin. News 3013, 3022.

"15 U.S.C. § 78(1) (g) (2) (G) provides that the provisions of the subject section shall not apply in respect of—

"(G) any security issued by an insurance company if all of the following conditions are met:

"(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

"(iii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regu-

The Committee Report indicates the continued solicitude of the Congress for state regulation of the insurance business, including practices related to insurance stocks.

We are in accord with the views expressed by the district court that:

[T]he requested relief of invalidation by this Court of the corporate merger, now finally approved by the Arizona Director of Insurance pursuant to A.R.S. § 20-731, would at least "impair", if not "invalidate" or "supersede", (sic) laws enacted by the State of Arizona "for the purpose of regulating the business of insurance", within the meaning of the applicable provisions of the McCarran Act [15 U.S.C. § 1012 (b)].

The judgment appealed from is affirmed.

lation conforms to that prescribed by the National Association of Insurance Commissioners.

"(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 78p of this title."

The State of Arizona adopted legislation complying with such conditions. See Ariz. Rev. Stat. § 20-143.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 21146

**SECURITIES AND EXCHANGE COMMISSION, APPELLANT
NATIONAL SECURITIES INC., ET AL., APPELLEES**

**Appeal from the United States District Court for the
District of Arizona.**

**This cause came on to be heard on the Transcript of the
Record from the United States District Court for the Dis-
trict of Arizona and was duly submitted.**

**On consideration whereof, It is now here ordered and
adjudged by this Court, that the judgment of the said
District Court in this Cause be, and hereby is affirmed.**

Filed and entered Nov. 14, 1967.

SUPREME COURT OF THE UNITED STATES

No. 1201, October Term, 1967

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

NATIONAL SECURITIES, INC., ET AL.

ORDER ALLOWING CERTIORARI—Filed April 22, 1968

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.